Hartalega Sdn Bhd & Anor v Kerajaan Negeri Selangor & Ors

HIGH COURT (SHAH ALAM) — CIVIL SUIT NO BA-21NCVC-87–11 OF 2018
TEE GEOK HOCK JC
30 MAY 2022

Tort — Negligence — Duty of care — Defendants promised and agreed to provide site land to plaintiffs with lease — Subsequent discovery of state land being previously gazetted or earmarked for expressway construction — Plaintiffs had to relocate and re-build pump house at different site — Whether defendants were negligent — Whether defendants was in breach of statutory duty — Whether plaintiffs could make any claim against defendants

Pursuant to their plan to expand their rubber glove factory operations in Malaysia, the plaintiffs approached the first defendant for the necessary approvals including the two sites for intake of river water, the rights to draw water from two rivers, the easement and right-of-way for laying and operating the water pipes and electrical cables connecting the river intakes to the proposed new factory in Sepang, lease of the state land beside the Langat River for construction and operation of the pump house and water intake facility there, etc. The approvals including the site for the pump house and water intake at the Langat River were given by the first defendant and as an interim measure pending the lengthy process of *gazetting* the lease of 21 years, the first defendant and the relevant land office issued temporary occupation license ('TOL') for the Langat pump house to the plaintiffs. With the necessary governmental approvals including those from the State Government departments, the plaintiffs proceeded to design, construct and complete the new factory at Sepang District. About two years after the completion of the new factory and the pump houses and river intakes, it was discovered that the parcel of state land where the Langat pump house had been built had been previously *gazetted* or earmarked for the Maju Expressway construction. As a result, the plaintiffs had to demolish the completed Langat pump house and re-build another new pump house at a different location beside the Langat River and incurred additional costs and expenses. The plaintiffs argued that the damages they suffered were caused by negligence, breach of statutory duty and/or breach of legitimate expectation on the part of the first defendant and the relevant land office. The plaintiffs claimed against the defendants, inter alia, general damages and special damages in the sum of RM14,285,188.85. The defendants averred, inter alia, that at all material times the defendants processed the plaintiffs' applications in good faith and in accordance with the provisions of the National Land Code ('the NLC') and therefore the defendants merely acted administratively under the NLC and were

mandatorily protected by s 22 of the NLC. A

Held:

(1) Section 22 of the NLC did not confer protection or immunity from liability upon the State Government or its officers appointed under the NLC in all and every factual situation. The constituent promises made by the State Government for the attraction of this huge investment to Sepang District in the State were acts and steps of investment promotion and attraction to the State, which acts and steps did not fall within the scope of duties or powers or functions under the NLC. In the circumstances, the State Government and the land office could not hide behind the limited protection of s 22 of the NLC. A state government who, in the course of promoting and encouraging investment by a private company by making promise of a leasehold of a parcel of state land which was essential for the private company's construction and operation of a sizeable factory in the state, could be liable for negligence in making such promise in breach of its duty of care if it was discovered subsequent to the completion of the pump house thereat that the said parcel of state land had previously been *gazetted* or earmarked for an expressway construction, thereby resulting in the need to relocate and re-build another pump house at a different site and causing damages to the private company (see paras 59–60 & 65). B C D E

(2) The reasonable foresight and proximity requirements were present as the defendants could reasonably foresee that loss or damage would be caused to the plaintiffs if the defendants were to provide a wrong site to the plaintiffs and that the parties being directly involved in the package deal discussions and negotiations for a major investment in a new glove manufacturing factory, the parties were in a proximate relationship. The plaintiffs were so closely and directly affected by the defendants' act that the defendants ought to have them in contemplation as being affected by them when directing the defendants' mind to the acts or omissions in question, ie in confirming the suitability of the location and land parcel to be approved to the plaintiffs for their construction and operation of the pump house and river water intake point for the proposed rubber glove factory at Sepang. In the premises, the defendants owed the plaintiffs a duty of care. In the written confirmation of clean slate for the subject land to be used for the plaintiffs' first Langat intake pump house, the third defendant made an erroneous assumption in breach of duty of care on the part of the third defendant. The first and third defendants were liable to the plaintiffs under the tort of negligence (see paras 69, 71, 74, 84 & 86). F G H I

(3) The plaintiffs had not committed any breach of the TOL terms by constructing the pump house and other related structures at the first

Langat intake site. Moreover, the relevant design plans and drawings for the construction of the first Langat intake pump house and related structures were approved by the relevant governmental authorities including the state governmental authorities before the plaintiffs constructed and completed them. None of the defences raised by the defendants was valid or sustainable. The plaintiffs had established the liability in negligence against the first defendant and the third defendant (see paras 94–95).

(4) The plaintiffs had proved on a balance of probabilities the damages in the form of additional costs or wasted costs of design, construction and completion of the Langat pump houses, intake structures and related facilities as a result of the relocation of the Langat intake, except that some of the items of costs should be dropped or excluded from the plaintiffs' claims because they constituted upgrading costs or costs which would have to be incurred even if there was no relocation of the pump house or intake structure. The first defendant and the third defendant ought to jointly and severally pay damages totalling RM6,538,167 to the plaintiffs (see paras 104 & 116).

[Bahasa Malaysia summary

Berdasarkan rancangan mereka untuk memperluaskan operasi kilang sarung tangan getah mereka di Malaysia, plaintif telah menghubungi defendan pertama untuk mendapatkan kelulusan yang diperlukan termasuk dua tapak untuk pengambilan air sungai, hak untuk menimba air dari dua sungai, ismen dan hak lalu lalang untuk memasang dan mengendalikan paip air dan kabel elektrik yang menghubungkan alur masuk sungai ke cadangan kilang baharu di Sepang, pajakan tanah negeri di tepi Sungai Langat untuk pembinaan dan operasi rumah pam dan kemudahan pengambilan air di sana, dsb. Kelulusan termasuk tapak untuk rumah pam dan pengambilan air di Sungai Langat telah diberikan oleh defendan pertama dan sebagai langkah interim sementara menunggu proses pewartaan pajakan yang panjang selama 21 tahun, defendan pertama dan pejabat tanah yang berkaitan mengeluarkan lesen pendudukan sementara ('LPS') untuk rumah pam Langat kepada plaintif. Dengan kelulusan kerajaan yang diperlukan termasuk daripada jabatan Kerajaan Negeri, plaintif meneruskan mereka bentuk, membina dan menyiapkan kilang baharu di Daerah Sepang. Kira-kira dua tahun selepas kilang baharu dan rumah pam serta alur masuk sungai siap, didapati petak tanah negeri di mana rumah pam Langat yang dibina sebelum ini telah diwartakan atau diperuntukkan untuk pembinaan Lebuhraya Maju. Akibatnya, plaintif terpaksa merobohkan rumah pam Langat yang telah siap dan membina semula sebuah lagi rumah pam baharu di lokasi berbeza di sebelah Sungai Langat dan menanggung kos dan perbelanjaan tambahan. Plaintif berhujah bahawa ganti rugi yang mereka alami adalah disebabkan oleh kecuaian, pelanggaran kewajipan berkanun dan/atau pelanggaran jangkaan sah di pihak defendan

pertama dan pejabat tanah yang berkaitan. Plaintif menuntut terhadap defendan, antara lain, ganti rugi am dan ganti rugi khas berjumlah RM14,285,188.85. Defendan menegaskan, antara lain, bahawa pada setiap masa material defendan memproses permohonan plaintif dengan suci hati dan mengikut peruntukan Kanun Tanah Negara ('KTN') dan oleh itu defendan hanya bertindak secara pentadbiran di bawah KTN dan telah dilindungi secara mandatori oleh s 22 KTN.

Diputuskan:

(1) Seksyen 22 KTN tidak memberikan perlindungan atau kekebalan daripada liabiliti kepada Kerajaan Negeri atau pegawainya yang dilantik di bawah KTN dalam semua dan setiap keadaan fakta. Janji-janji penyusunan yang dibuat oleh Kerajaan Negeri untuk menarik pelaburan besar ini ke Daerah Sepang di Negeri ini adalah tindakan dan langkah-langkah promosi dan tarikan pelaburan kepada Negeri, yang tindakan dan langkah tidak termasuk dalam skop tugas atau kuasa atau fungsi di bawah KTN. Dalam keadaan itu, Kerajaan Negeri dan pejabat tanah tidak dapat berselindung di sebalik perlindungan terhad s 22 KTN. Kerajaan negeri yang, semasa mempromosi dan menggalakkan pelaburan oleh syarikat swasta dengan membuat janji pegangan pajakan sebidang tanah negeri yang penting untuk pembinaan dan operasi kilang yang besar oleh syarikat swasta di negeri itu, boleh bertanggungjawab kerana kecuaian membuat janji sedemikian yang melanggar kewajipan penjagaannya jika didapati selepas siapnya rumah pam di situ bahawa petak tanah negeri tersebut sebelum ini telah diwartakan atau diperuntukkan untuk pembinaan lebuh raya, dengan itu menyebabkan keperluan untuk menempatkan semula dan membina semula rumah pam lain di tapak lain dan menyebabkan kerosakan kepada syarikat swasta (lihat perenggan 59–60 & 65).

(2) Keperluan ramalan munasabah dan kedekatan adalah wujud kerana defendan secara munasabah dapat meramalkan bahawa kerugian atau kerosakan akan berlaku kepada plaintif jika defendan memberikan tapak yang salah kepada plaintif dan pihak yang terlibat secara langsung dalam perjanjian pakej perbincangan dan rundingan untuk pelaburan besar dalam kilang pembuatan sarung tangan baharu, kedua-dua pihak berada dalam hubungan dekat. Plaintif-plaintif begitu rapat dan secara langsung terpengaruh dengan perbuatan defendan-defendan sehingga defendan-defendan sepatutnya menganggap mereka terpengaruh oleh mereka apabila mengarahkan fikiran defendan kepada perbuatan atau peninggalan yang dipersoalkan, iaitu dalam mengesahkan kesesuaian lokasi dan petak tanah untuk diluluskan kepada plaintif untuk pembinaan dan pengendalian rumah pam dan tempat pengambilan air sungai untuk cadangan kilang sarung tangan getah di Sepang. Dengan premis itu, defendan berhutang dengan plaintif kewajipan berjaga-jaga.

Dalam pengesahan bertulis batu tulis bersih untuk tanah subjek yang akan digunakan untuk rumah pam masuk Langat pertama plaintif, defendan ketiga membuat andaian yang salah yang melanggar kewajipan penjagaan di pihak defendan ketiga. Defendan pertama dan ketiga bertanggungjawab kepada plaintif di bawah tort kecuaian (lihat perenggan 69, 71, 74, 84 & 86).

(3) Plaintif tidak melakukan sebarang pelanggaran syarat LPS dengan membina rumah pam dan struktur lain yang berkaitan di tapak masuk Langat yang pertama. Selain itu, pelan reka bentuk dan lukisan yang berkaitan untuk pembinaan rumah pam masuk Langat pertama dan struktur berkaitan telah diluluskan oleh pihak berkuasa kerajaan yang berkaitan termasuk pihak berkuasa kerajaan negeri sebelum plaintif membina dan menyiapkannya. Tiada satu pun pembelaan yang dibangkitkan oleh defendan adalah sah atau dapat dipertahankan. Plaintif telah membuktikan liabiliti dalam kecuaian terhadap defendan pertama dan defendan ketiga (lihat perenggan 94–95).

(4) Plaintif telah membuktikan atas imbangan kebarangkalian ganti rugi dalam bentuk kos tambahan atau kos pembaziran reka bentuk, pembinaan dan penyiapan rumah pam Langat, struktur alur masuk dan kemudahan yang berkaitan akibat daripada penempatan semula alur masuk Langat, kecuali bahawa beberapa item kos harus digugurkan atau dikecualikan daripada tuntutan plaintif kerana ia merupakan kos menaik taraf atau kos yang perlu ditanggung walaupun tiada penempatan semula rumah pam atau struktur pengambilan. Defendan pertama dan defendan ketiga hendaklah secara bersama dan berasingan membayar ganti rugi berjumlah RM6,538,167 kepada plaintif (lihat perenggan 104 & 116).]

Cases referred to

Au Meng Nam & Anor v Ung Yak Chew & Ors [2007] 5 MLJ 136; [2007] 4 CLJ 526, CA (refd)

Blue Ocean Biotech Sdn Bhd v Pengarah Tanah dan Daerah Galian Negeri Perak & Ors [2018] MLJU 611; [2018] 9 CLJ 661, HC (refd)

Hamdan bin Johan & Ors v FELCRA Bhd & Ors [2010] 8 MLJ 628; [2010] 3 CLJ 474, HC (refd)

Harris v Director of Public Prosecutions [1952] 1 All ER 1044, HL (refd)

Hotel Sentral (JB) Sdn Bhd v Pengarah Tanah dan Galian Negeri Johor, Malaysia & Ors [2017] 5 MLJ 116; [2016] 3 CLJ 931, CA (refd)

Kayangan Mentari Sdn Bhd v Pengarah Tanah dan Galian Selangor & Ors [2016] MLJU 489; [2016] 1 LNS 977, HC (refd)

LBCN Development Sdn Bhd & Anor v Pengarah Tanah dan Galian Selangor & Ors [2014] 3 MLJ 445; [2014] 3 CLJ 970, CA (refd)

Lebbey Sdn Bhd v Chong Wooi Leong & Anor and other applications [1998] 5 MLJ 368; [1998] 1 CLJ 1072, HC (refd)

Majlis Amanah Rakyat (MARA) v Tam Seek Hong & Ors [1994] 3 CLJ 64, HC (refd)
Mutual Life & Citizens' Assurance Co Ltd & Another v Clive Raleigh Evatt [1971] AC 793, PC (refd)
North East Plantations Sdn Bhd lwn Pentadbir Tanah Daerah Dungun dan satu lagi [2018] supp MLJ 293; [2011] 4 CLJ 729, FC (refd)
P&A Systech Sdn Bhd v Kerajaan Negeri Kedah Darul Aman [2018] 1 LNS 845, HC (refd)
Papoo v Veeriah [1965] 1 MLJ 127 (refd)
Pendaftar Hakmilik Negeri Selangor & Ors v Shaifulizam bin Mohd Saleh & Anor and another appeal [2020] 5 MLJ 1; [2020] 5 CLJ 595, CA (refd)
Pendaftar Hakmilik Negeri Selangor v Caesius Development Sdn Bhd & Ors and another appeal [2020] MLJU 25; [2020] 3 CLJ 327, CA (refd)
Pentadbir Tanah dan Daerah Petaling & Ors v Bandar Utama City Corp Sdn Bhd (previously known as Damansara Jaya Sdn Bhd) & Anor and another appeal [2021] 4 MLJ 689; [2021] 5 CLJ 480, CA (refd)
Pushpaleela a/p R Selvarajah & Anor v Rajamani d/o Meyappa Chettiar and other appeals [2019] 2 MLJ 553, FC (folld)
Quinn v Leatham [1901] AC 495, HL (refd)
T Sivam a/l Tharamalingam (as representative/administrator for the estate of Nagamuthu a/l Periasamy, deceased) v Public Bank Bhd [2018] 5 MLJ 711; [2018] 6 CLJ 1, FC (refd)
Tenaga Nasional Malaysia v Batu Kemas Industri Sdn Bhd and another appeal [2018] 5 MLJ 561; [2018] 6 CLJ 683, FC (folld)
YKK (M) Sdn Bhd v Pengarah Tanah dan Galian Johor [2021] 6 MLJ 496; [2021] 8 CLJ 179, FC (refd)

Legislation referred to

National Land Code ss 8, 11, 12, 12(a), (b), 22, 62, 78(3), 340(2), (3), Forms 4C, 5F

David Chong (Mustafa Ling & Co) for the plaintiffs.
Nur Irmawatie bt Daud (Selangor State Legal Offices) for the defendants.

Tee Geok Hock JC:

INTRODUCTION

[1] One of the main issues in dispute in the present case is whether a state government who, in the course of promoting and encouraging investment by private company by making promise of a leasehold of a parcel of state land which is essential for the private company's construction and operation of a sizeable factory in the state, can make such promise with impunity if it is discovered subsequent to the completion of the pump house thereat that the said parcel of state land has previously been *gazetted* or earmarked for an

A expressway construction, thereby resulting in the need to relocate and re-build another pump house at a different site and causing damages to the private company.

B **[2]** On 31 March 2022 this court, after having conducted a full trial and having heard submissions, answered the above question in the negative, held that the state government and its relevant land office were liable for negligence in making such a promise in the course of promoting and encouraging investment to the state and ordered them to pay damages to the plaintiffs here.

C **[3]** Dissatisfied with the said decision the State Government and its relevant land office has appealed to the Court of Appeal.

THE PARTIES' PLEADED CLAIMS AND DEFENCES

D **[4]** In gist the plaintiffs in their amended statement of claim pleaded that: (a) pursuant to their plan to expand their rubber glove factory operations in Malaysia they approached the State Government for the necessary approvals including the two sites for intake of river water, the rights to draw water from E two rivers, the easement and right-of way for laying and operating the water pipes and electrical cables connecting the river intakes to the proposed new factory in Sepang, lease of the state land beside the Langat River for construction and operation of the pump house and water intake facility there, etc; (b) the approvals including the site for the pump house and water intake at F the Langat River were given by the State Government and as an interim measure pending the lengthy process of gazetting the lease of 21 years, the State Government and the relevant land office issued TOL for the Langat pump house to the plaintiffs; (c) with the necessary governmental approvals including those from the State Government departments, the plaintiffs proceeded to G design, construct and complete the new factory at Sepang District; (d) about two years after the completion of the new factory and the pump houses and river intakes, it was discovered that the parcel of state land where the Langat pump house has been built had been previously *gazetted* or earmarked for the Maju Expressway construction; (e) as a result, the plaintiffs had to demolish the H completed Langat pump house and re-build another new pump house at a different location beside the Langat River and incurred additional costs and expenses; and (f) the plaintiffs argued that the damages they suffered were caused by negligence, breach of statutory duty and/or breach of legitimate expectation on the part of the State Government and the relevant land office.

I **[5]** In the amended statement of claim the plaintiffs claim against the defendants: (a) general damages; (b) special damages in the sum of RM14,285,188.85; (c) interest at 8%pa; (d) further or other orders or directions as may seem fit; and (e) costs of action.

[6] In the amended statement of claim the plaintiffs rely on these causes of action: (a) negligence; (b) breach of statutory duty; and (c) breach of legitimate expectation.

[7] As a brief summary, the defendants' defences are as follows:

(a) the defendants took prompt steps and rendered prompt assistance in getting the new location for the replacement pumphouse and in issuing prompt approvals for the new pump house at Sungai Langat and the plaintiffs at the material times did not raise the question of compensation (para 26 of the defence);

(b) the plaintiffs' claims for damages is a tactical manoeuvre to obtain additional profit after having obtained the replacement land from the State Government (para 27 of the defence);

(c) the claims on vicarious liability against the defendants are contrary to the provisions of law and should not have been raised (para 28 of the defence);

(d) the defendant deny any duty of care or breach of duty of care (para 29 read with paras 7 to 12 and 17 of the defence);

(e) the defendant deny any statutory duty or breach of statutory duty (para 29 read with paras 7 to 12 and 17 of the defence);

(f) the defendant deny that the doctrine of legitimate expectation is applicable to the defendants (para 30 of the defence);

(g) the defendants aver that the plaintiffs have no locus standi to sue the defendants because Lot 7572 and the land adjacent to Lot 6271 are vested in the first defendant and not owned by the plaintiffs (para 33 of the defence);

(h) the defendants aver that the TOL issued to the plaintiffs did not constitute ownership and therefore the plaintiffs have no right to claim any damages or compensation for cancellation of the TOL (paras 34 and 35 of the defence);

(i) the defendants aver that under the terms of the TOL issued to the plaintiffs, no permanent structure could be built thereon and in the circumstances the plaintiffs contravened the laws and cannot claim anything against the defendants as a result of the plaintiffs' negligence or neglect in complying with the laws (para 36 of the defence);

(j) the defendants aver that at all material times the defendants processed the plaintiffs' applications in good faith and in accordance with the provisions of the National Land Code ('the NLC') and therefore the defendants merely acted administratively under NLC and are mandatorily protected by s 22 of the NLC (para 37 of the defence); and

(k) the defendants deny that the plaintiffs have suffered damages or that the plaintiff could recover any damages from the defendants (paras 38 to 41 of the defence).

[8] In the statement of issues to be tried, the parties grouped the issues to be tried into three broad issues, namely: (a) whether the defendants were negligent in that they did not confirm Lot 7572 or part thereof was involved in the land acquisition for construction of the MEX II highway; (b) whether the defendants was in breach of the legitimate expectation for the occupation and use of the pump house site and the site for water pipes and electricity cables; and (c) whether the plaintiffs can make any claim against the defendants for the plaintiffs' costs of relocating the pump house to the new site

CAUSE PAPERS, PROCEEDINGS AND FULL TRIAL

[9] In the course of preparation for and conduct of the full trial, the following cause papers filed and exchanged between the parties were marked as follows:

(a) bundle of pleadings 3 ('encl 71');

(b) common bundle AA1 (Part A documents) ('encl 32');

(c) common bundle AB1 (Part B documents) ('encl 33');

(d) common bundle AB2 (Part B documents) ('encl 60');

(e) common bundle AB3 (Part B documents) ('encl 61');

(f) common bundle AB4 (Part B documents) ('encl 62');

(g) common bundle AB5 (Part B documents) ('encl 63');

(h) common bundle AB6 (Part B documents) ('encl 64');

(i) common bundle AB7 (Part B documents) ('encl 65');

(j) common bundle AB8 (Part B documents) ('encl 66');

(k) common bundle AB9 (Part B documents) ('encl 67');

(l) common bundle AB10 (Part B documents) ('encl 49');

(m) common bundle AB11 (Part B documents) ('encl 50');

(n) common bundle AB12 (Part B documents) ('encl 51');

(o) common bundle AB13 (Part B documents) ('encl 52');

(p) common bundle AB14 (Part B documents) ('encl 53');

(q) common bundle AB15 (Part B documents) ('encl 54');

(r) common bundle AB16 (Part B documents) ('encl 55');

(s) common bundle AB17 (Part B documents) ('encl 56');

(t) common bundle AB18 (Part B documents) ('encl 57');

(u) common bundle AB19 (Part B documents) ('encl 58');

(v) common bundle PC6 (Part C documents) ('encl 72');

(w) common bundle PC7/AB21 (initially Part C, later upgraded to Part B documents) ('encl 96');

(x) common bundle PC8/AB22 (initially Part C, later upgraded to Part B documents) ('encl 98');

(y) Scott Schedule of defendants SSD ('encl 99');

(z) Scott Schedule C1: SSC1 ('encl 100');

(aa) Scott Schedule C2: SSC2 ('encl 101');

(ab) Scott Schedule C3: SSC3 ('encl 102');

(ac) Scott Schedule C4: SSC4 ('encl 103');

(ad) Scott Schedule C5: SSC5 ('encl 104');

(ae) Scott Schedule E1: SSE1 ('encl 105');

(af) Scott Schedule E2: SSE2 ('encl 106');

(ag) Scott Schedule M1: SSM1 ('encl 107');

(ah) Issues to be tried ('encl 13');

(ai) statement of agreed facts ('encl 30');

(aj) plaintiffs' witness statement by Long Mutalib bin Zainal No 1 (WSPW1) ('encl 75')

(ak) plaintiffs' witness statement by Long Mutalib bin Zainal No 2 (WSPW1(A)) ('encl 74');

(al) plaintiffs' witness statement by Liang Ize Meng @ Liang Tze Meng No 1 (WSPW2) ('encl 76');

(am) plaintiffs' witness statement by Liang Ize Meng @ Liang Tze Meng No 2 (WSPW2(A)) ('encl 91');

(an) plaintiffs' witness statement by Liang Ize Meng @ Liang Tze Meng No 3 (WSPW2(B)) ('encl 97');

(ao) plaintiffs' witness statement by Leong Choon Kee (WSPW3) ('encl 77');

(ap) defendants' witness statement by Nur Afida bt Zahazmi (WSDW1) ('encl 84'); and

(aq) defendants' witness statement by Sharina bt Shahrom (WSDW2) ('encl 85').

[10] It was also the agreed procedure that:

(a) at the full trial, upon the witness' affirmation and confirmation of the contents of his/her witness statement as his/her evidence, the witness statement and its contents are deemed to be read and there is no necessity for the witness to read the contents of the witness statement into the CRT system. This procedure is without prejudice to the rule against hearsay, ie the principle of evidence which requires witnesses to testify as to facts and matters within their personal knowledge and not on hearsay evidence. Liberty is given to the counsel to ask supplementary or additional question in examination-in-chief to clarify or explain or highlight salient parts of the witness statement before the cross-examination begins; and

(b) in order to save time and costs at the full trial, the Part A and Part B documents referred to in the witnesses' statements and evidence are marked as per the marking of agreed bundles of documents as 'AA' and 'AB' numbers respectively followed by the page numbers and there is no necessity to mark the relevant pages of the Part A and Part B documents with separate exhibit numbers again. However, this procedure shall be without prejudice to the rule against hearsay. Part C document, when either upgraded into Part B document or its original have been tendered by the maker and verified as authentic, shall be marked with a separate exhibit number.

[11] The trial proceeded for eight days on 7 September 2021, 17 September 2021, 30 September 2021, 22 October 2021, 8 November 2021, 25 November 2021, 29 November 2021 and 14 December 2021 at which the following witnesses attended and gave oral evidence:

(a) PW1 Long Mutalib, project manager of the plaintiffs;

(b) PW2 Liang Ize Meng @ Liang Tze Meng, Commercial Manager of FCY Construction Sdn Bhd;

(c) PW3 Leong Choon Kee, Managing Director of G&P Dams and Water Services Sdn Bhd;

(d) DW1 Nur Afida Zahazmi, penolong pegawai daerah (Unit Pelupusan Tanah), Pejabat Daerah/Tanah Kuala Langat; and

(e) DW2 Sharina bt Shahrom, penolong pegawai tanah (Unit Teknikal & Penguatkusaan).

[12] After the completion of the full trial, the parties filed and exchanged their written submissions and their reply submissions. A

AGREED FACTS

[13] The facts agreed between the first plaintiff ('P1'), second plaintiff ('P2') and the first defendant ('D1'), second defendant ('D2') and third defendant ('D3') are as follows: B

(a) D2 and D3 are appointed by D1 to exercise or perform any powers or duties conferred or imposed the D1 under the National Land Code 1965 ('the NLC'); C

(b) P2 is the registered proprietor of land held under HS(D) 36056, No PT 5786, Mukim Labu, Daerah Sepang, Negeri Selangor;

(c) following the Mesyuarat Majlis Kerajaan Negeri Selangor ('MMKN') Bil 13/2013 held on 3 April 2013, MMKN had approved the proposed laying of pipes on the reserve drainage and road at the district of Kuala Langat and Sepang by way of lease for the purposes of extracting water from the Labu River, Daerah Sepang and Langat River, Daerah Kuala Langat; D E

(d) pending the completion of the process in respect of the lease and *gazette* of the reserved land, P2 was given the temporary occupation license ('TOL') by the relevant authorities through MMKN 28/2014 on 23 July 2014 for the construction of the following: F

(i) pump house at Sg Kuala Langat ('first intake') measuring approximately 2,109sqmt of land being part of Lot 7572, Bukit Changgang, Mukim Tanjong Duabelas, Daerah Kuala Langat, Negeri Selangor; and

(ii) a right of way ('Right of Way') to lay electricity cables ('TNB') and water pipes measuring approximately 6,617sqmt on reserved land at Bukit Changgang, Mukim Tanjong Duabelas, Daerah Kuala Langat, Negeri Selangor. G

(e) the plaintiffs had paid a sum of RM13,876.32 for the first intake and RM90,125.60 for the Right of Way. H

Approval From LUAS

(f) the approvals for extraction of water from Labu River and Langat River were obtained as follows:

(i) by letter dated 17 April 2013 from LUAS addressed to the P1, the following was confirmed: I

(1)the approval is principally given for the operations of the factory, extraction of water from the Labu River and Langat River and the release of treated water back into

A the said rivers is subject to conditions to be fixed;

(2)no building structure is permitted on the reserve pipe line;

(3)the approval in respect of the lease for the land is required and subject to payment of lease charges;

B

(4)drawings and plans for the 'keperluan muka sauk', pump house, the water processing plant and right of way for the water pipes to all the relevant technical departments for shall be submitted for approval;

(5)approval from LUAS has to be obtained before the commencement of any C building of structure across or on the Labu River or the Langat River including volume of water extraction, weir and others;

(6)LUAS is to be paid 5 sen for each meter cube of raw water extracted; and

(7)The approval is subject to adherence to all conditions and procedures determine by D LUAS and other technical agencies.

(ii) P2 proceeded to submit the details applications for the laying of the pipes to the relevant state agencies which includes the Kuala Langat Land Office and the Sepang Land Office.

E

CHRONOLOGY OF MAIN FACTS AND EVENTS AS FOUND BY THIS COURT

[14] Pursuant to the plaintiffs' desire to expand its glove manufacturing F operations in Malaysia and upon the plaintiffs' representatives having approached the Selangor State Government for such purpose, the State Government through its various departments and agencies (including Invest Selangor, Exco members of the State, Menteri Besar's Office, Lembaga Urus Air Selangor, Jabatan Pengairan Saliran Selangor, Sepang Land Office, Kuala G Langat Land Office) in 2012 and 2013 entered into discussions and negotiations with the plaintiffs regarding the proposed expansion of glove manufacturing operations at a new factory to be constructed in Sepang District in the State of Selangor. Two pumping stations at two separate parts of two different rivers, each connected by twin pipelines from the respective pumping H stations to the factory expansion facilities, were essential for the operations of the expanded glove manufacturing operations at the new factory at Sepang so as to pump in water from the rivers for the new factory's manufacturing operations and to pump out treated effluent water from the factory for discharge to the rivers respectively (see WS-PW1 Long Mutalib Q&A6). The I in-principle approval of the State Government for the project new factory project was given vide Majlis Mesyuarat Kerajaan Negeri's decision on 3 April 2013 (see paras 4.1.1 and 4.1.2 of the defendants' written submission). The abovementioned facts were not disputed or contradicted by the defendants.

[15] As a result of the discussions and negotiations between them, a package investment deal was agreed upon between the parties whereby:

(a) the State Government agreed in principle that a parcel of the State land fronting a river would be leased to the plaintiffs for 21 years for the site of one of the two pump houses needed for the operations of the proposed new glove manufacturing factory;

(b) the State Government would facilitate the pipeline construction and operation by granting lease and/or right of way for the pipelines which would be laid at various lands to connect the new factory to the two pump houses;

(c) the State Government would levy the appropriates fees and charges upon the plaintiffs for the use of the lands;

(d) the State Government through Lembaga Pengurusan Air Selangor would give the plaintiffs a licence to extract water from Labu River and Langat River for use in the new factory's glove manufacturing operations;

(e) the plaintiffs would purchase land for the new factory site and undertake the design, construction and completion of a new factory at Sepang District for the glove manufacturing operations at their costs and expenses;

(f) the plaintiffs would purchase land required for the site of the pump house at the Labu River;

(g) the plaintiffs would undertake the design, construction, completion and operations of the two pump houses (one on the plaintiff's newly-purchased land at the Labu River and the other at the first defendant's land provided by the first defendant through a 21 year lease) and the electricity cables and water pipelines at various land (connecting the new factory and the two pump houses) at their own costs and expenses;

(h) the plaintiffs would carry out the manufacturing and factory operations at their own costs and for their own benefit; and

(i) other ancillary or miscellaneous cooperation and collaboration between the parties.

[16] For the purposes of the new factory, the second plaintiff signed a sale and purchase agreement dated 12 June 2013 with the landowner for the sale and purchase of 112 acres of land in Sepang District for a purchase price of RM96,788,888.88. This sale and purchase transaction was duly completed and the second plaintiff became the registered proprietor of the said 112 acres

of land for the new factory site in Sepang District (see WS-PW1 Long Mutalib Q&A8). The abovementioned facts were not disputed or contradicted by the defendants.

[17] The second plaintiff also signed another sale and purchase agreement dated 12 June 2013 with the landowner for the sale and purchase of 7,000 sqft of land at the purchase price of RM168,000 for the site of the Labu pump house in Sepang District. This sale and purchase transaction was duly completed and the second plaintiff became the registered proprietor of the said 7,000 sqft of land for the site of the Labu pump house (see WS-PW1 Long Mutalib Q&A8). The abovementioned facts were not disputed or contradicted by the defendants.

[18] The location of the pump house at Sg Kuala Langat ('Langat first intake') was 2,109 sqmt of State land on part of Lot 7572, Bukit Changgang, Mukim Tanjong Dua belas, Daerah Kualan Langat, Selangor ('Langat Lot 7572'), while the location of the pump house at Sg Labu ('Labu intake') was a part of parcel of State land fronting Sg Labu in Sepang District ('Labu land'). These facts are common facts which are not disputed by either party.

[19] Approvals for the land and right of way for the laying and operation of electricity cables and water pipes from the factory expansion facilities to the Langat first intake and the Labu intake were obtained by the plaintiffs from the State Government as follows:

(a) Kuala Kangat Land Office's letter dated 12 August 2014 notifying the second plaintiff that Mesyuarat Majlis Kerajaan Negeri Selangor ('MMKN'), the official meeting of the Exco of the State Government, at its meeting MMKN 28/2014 on 23 July 2014 approved the second plaintiff's application for a temporary occupation licence ('TOL') of a piece of land for the construction of the first intake on terms and conditions (see AA1/14–5 WS-PW1 Long Mutalib Q&A7);

(b) Kuala Kangat Land Office's letter dated 12 August 2014 notifying the second plaintiff that at its meeting MMKN 28/2014 on 23 July 2014 approved the second plaintiff's application for a temporary occupation licence ('TOL') of land to lay electricity cables and water pipes from the factory to the first intake on terms and conditions (see AA1/11–13 WS-PW1 Long Mutalib Q&A7);

(c) Sepang Land Office's letter dated 24 April 2015 notifying the plaintiffs of the MMKN's approval for land and right of way for laying and operation of electricity cables and water pipes from the factory expansion facilities to the Labu intake pumphouse (see AA1/8–10 WS-PW1 Long Mutalib Q&A7);

(d) Lembaga Urus Air Selangor ('LUAS'), the water authority under the State Government, gave approval in 2013 and 2014 for extraction of water from the two rivers and release of treated water back into the rivers on the usual terms and conditions)see WS-PW1 Long Mutalib Q&A6); and

(e) Jabatan Pengairan Saliran Selangor gave approval for the design of the inlet structure alongside the rivers (see WS-PW1 Long Mutalib Q&A6).

The abovementioned facts were not disputed or contradicted by the defendants.

[20] The plaintiffs were informed and represented by the defendants that the lease for the land reserved in respect of the first intake has been principally approved for 21 years, however, due to procedural requirements, the second plaintiff will first be given a temporary occupation license for three years which will be renewed until the completion of the *gazette* pursuant to the s 62 of the NLC for period of 21 years (para 14 of the agreed facts, SAF ('encl 30')).

[21] After having obtained the relevant building plan approval and other requisite approvals from the relevant authorities including the local authorities in the State, the plaintiffs constructed and completed the new glove manufactory factory together with the administration building and the hostel at the Sepang factory site in or before January 2015 at a total cost of approximately RM2.2 billion (see WS-PW1 Long Mutalib Q&A9). The abovementioned facts were not disputed or contradicted by the defendants. Documentary evidence of the abovementioned facts include:

(a) the second plaintiff appointed FCY Construction Sdn Bhd ('FCY') and G&P Dams and Water Services Sdn Bhd ('G&P');

(b) the contract between FCY and P2 for the first intake is broken into four parts namely, Jld 1 to Jld 4. Total contract sum is RM25m;

(c) Jld 1 of the contract for the first intake can be found at AB13/1–86. Jld 2 of the contract for the first intake can be found at AB14/1–316 and AB15/1–269;

(d) Jld 3 of the contract for the first intake can be found at AB16/1–227, AB17/1–350 and AB18/1–352;

(e) Jld 4 of the contract for the first intake can be found at AB19/1–75;

(f) G & P's certification of all the progress claim for the first intake and the Labu River pump house evidencing that the construction of the same have been completed:

(i) G&P's certification for Progress Claim No 1 for the sum of RM1,312,233.41 (AB7/19);

(ii) G&P's certification for Progress Claim No 2 for the sum of RM2,417,517.56 (AB7/30);

(iii) G&P's certification for Progress Claim No 3 for the sum of RM2,038,975.13 (AB7/44);

(iv) G&P's certification for Progress Claim No 4 for the sum of RM2,200,649.51 (AB7/60);

(v) G&P's certification for Progress Claim No 5 for the sum of RM1,105,411.17 (AB7/73);

(vi) G&P's certification for Progress Claim No 6 for the sum of RM3,889,580.43 (AB7/86);

(vii) G&P's certification for Progress Claim No 7 for the sum of RM2,641,349.75 (AB7/100);

(viii) G&P's certification for Progress Claim No 8 for the sum of RM3,833,039.98 (AB7/118);

(ix) G&P's certification for Progress Claim No 9 for the sum of RM1,204,929.22 (AB7/128);

(x) G&P's certification for Progress Claim No 10 for the sum of RM1,709,648.54 (AB7/146);

(xi) G&P's certification for Progress Claim No 11 for the sum of RM934,943.32 (AB7/164);

(xii) G&P's certification for Progress Claim No 12 for the sum of RM461,721.99 (AB7/182);

(xiii) G&P's certification for Progress Claim No 13 for the sum of RM625,000 (AB7/201); and

(xiv) G&P's certification for Progress Claim No 14 for the sum of RM625,000 (AB7/219).

Payment records for the progress certified amounts were also produced in the Part B agreed bundles and testified to by PW1 Long Mutalib and PW2 Liang.

[22] After having obtained the relevant requisite approvals from the relevant authorities including the local authorities in the State, the second plaintiff constructed and completed the Labu pump house, the Langat pump house, the laying of the electricity cables and water pipes from the new factory at Sepang to the two pump houses at a total cost of RM25m (see WS-PW1 Long Mutalib Q&A9). The abovementioned facts were not disputed or contradicted by the defendants.

[23] The plaintiffs employed staff and workers and began operations at the new glove manufactory factory at Sepang and also began operating the Labu pump house, the Langat pump house, the electricity cables and the water pipes in January 2015 (see WS-PW1 Long Mutalib Q&A9). The abovementioned facts were not disputed or contradicted by the defendants.

[24] By letter dated 15 April 2015 PTD Kuala Langat (the third defendant) informed the second plaintiff that the lease of 21 years for the land on which the Langat pump house was constructed had been approved by the Menteri Besar of Selangor to be *gazetted*: AB1/92–94. The abovementioned fact was not disputed or contradicted by the defendants.

[25] The plaintiffs' operations of the new glove manufacturing factory and the pump houses continued smoothly without problem until end 2015. This is common fact accepted by both parties.

[26] Sometime in the end of 2015, PW1 Long Mutalib was contacted by the surveyor for Maju Expressway Sdn Bhd ('MESB) who informed him that the Langat first intake was constructed in the right of way of the highway connecting KLIA to Putrajaya also known as MEX II Highway (see WS-PW1 Long Mutalib Q&A190). The abovementioned facts were not disputed or contradicted by the defendants.

[27] By letter dated 6 March 2016 PTD Kuala Langat (the third defendant) asked the second plaintiff to attend a meeting to be held on 11 March 2016 at the third defendant's office (AA1/27–30 see WS-PW1 Long Mutalib Q&A19). The abovementioned fact was not disputed or contradicted by the defendants.

[28] At the meeting on 11 March 2016 MESBs representative told the meeting that the second plaintiff's Langat pump house was constructed on land in the right of way of MEX II highway, LLM and MESB stated that the right of way was *gazetted* at the Federal level on 27 April 2000 by the Federal Department of Director General of Lands and Mines (Jabatan Ketua Pengarah Tanah & Galian, or 'the Federal JKPTG'): see AA1/31–44 WS-PW1 Long Mutalib Q&A19. The abovementioned facts were not disputed or contradicted by the defendants.

[29] On 18 March 2016 a meeting was conducted by Invest Selangor Bhd at its office and attended by representatives from, inter alia, Invest Selangor Bhd, Majlis Daerah Kuala Langat, PTD Kuala Langat (the third defendant), LLM, MESB, the plaintiffs. Among others, the plaintiffs at the meeting stated that they would like to maintain the Langat Pump Hose as it was and that any relocation would involve disruptions and millions of losses. No solution could

be mutually concluded at the meeting (see AA1/31–44 WS-PW1 Long Mutalib Q&A19). The abovementioned facts were not disputed or contradicted by the defendants.

[30] Shortly after 18 March 2016, PW1 Long Mutalib as the plaintiffs' representative, attended two meetings with the representatives of LLM and MESB and they discussed options to resolve the problem. LLM and MESB insisted that they wanted the same alignment for MEX II highway without any change and it became apparent that the plaintiffs had to consider alternative sites for a new pump house at Sungai Langat (WS-PW1 Long Mutalib Q&A19). The abovementioned facts were not disputed or contradicted by the defendants.

[31] Invest Selangor Bhd convened another meeting on 29 April 2016 attended, among others, by representatives from Invest Selangor Bhd, PTD Kuala Langat (the third defendant), Majlis Kuala Langat, LLM, MESB and the plaintiffs. Although the plaintiffs would prefer to maintain the Langat pump house as it was, the meeting explored the alternative sites for relocation of the pump house: see AA1/48–56 WS-PW1 Long Mutalib Q&A19. The abovementioned facts were not disputed or contradicted by the defendants.

[32] Subsequent to 29 April 2016 PW1 Long Mutalib attended a meeting with LLM and MESB to, inter alia, explore and prepare for the contingency plan for pump house if the plaintiffs had to relocate it and also inquired with Jabatan Kerja Raya and Jabatan Pengairan Saliran Selangor: WS-PW1 Long Mutalib Q&A19. The abovementioned fact was not disputed or contradicted by the defendants.

[33] At the meeting convened by Invest Selangor Bhd on 6 June 2016 (attended, among others, by representatives from Invest Selangor Bhd, PTD Kuala Langat (the third defendant), Majlis Kuala Langat, LLM, MESB and the plaintiffs), no mutually agreeable solution could be found to the problem. At this meeting, the third defendant (PTD Kuala Langat) confirmed that the TOL on the land on which the Langat pump house was constructed would not be renewed until this problem was resolved: AA1/57–64 WS-PW1 Long Mutalib Q&A19. The abovementioned facts were not disputed or contradicted by the defendants.

[34] Invest Selangor Bhd convened yet another meeting on 18 July 2016 attended among others, by representatives from Invest Selangor Bhd, PTD Kuala Langat (the third defendant), Majlis Kuala Langat, LLM, MESB and the plaintiffs. From the discussions at the meeting it was apparent or reasonably clear that the defendants would adopt LLM and MESB's decision that MEX II highway alignment would not be changed but that the plaintiffs had to relocate

the Langat pump house to a new site to give way for the MEX II highway: AA1/65–74 WS-PW1 Long Mutalib Q&A19.The abovementioned facts were not disputed or contradicted by the defendants.

[35] After July 2016 the second plaintiff selected a new location for the relocation of the Langat pump house and proceeded to make applications for approvals to construct a new pump house at Sungai Langat to replace the existing Langat pump house. Essentially the second plaintiff repeated the process to obtain the necessary approvals and obtained approvals from the State Government, PTD Kuala Langat (the third defendant), LUAS, Jabatan Pengairan Saliran Selangor etc for the new pump house and the new inlet at Sungai Langat: WS-PW1 Long Mutalib Q&A20. The abovementioned facts were not disputed or contradicted by the defendants.

[36] At a meeting with Invest Selangor Bhd on 9 June 2017 the defendants told the second plaintiff that the second plaintiff would be given a TOL for the new pump house location and thereafter a lease of 21 years and gave the same reason why the TOL would be issued first before the lease is given: AA1/97 WS-PW1 Long Mutalib Q&A20. The abovementioned fact was not disputed or contradicted by the defendants.

[37] The second plaintiff then appointed design consultants and contractor to execute the design, construction and completion of the new pump house at Sungai Langat ('the New Langat pump house' or the 'second Langat intake') at a location which is less than 500m from the existing Langat pump house. The new second Langat intake was completed in 2018, together with the inlet at the Langat River and relevant part of the electricity cable and water pipeline to connect to the new second Langat intake (WS-PW1 Long Mutalib Q&A 20–22). The abovementioned facts were not disputed or contradicted by the defendants. Documentary evidence on the design and construction of the second Langat intake include:

(a) Jld I of the contract for the second intake (AB3/116–350);

(b) Jld II of the contract for the second intake (AB11/1–256 and AB12/1–294);

(c) Jld III of the contract for the second intake (AB4/1–319). Jld IV of the contract for the second intake (AB4/320–95). There are 11 progress claims by FCY:

  (i) Progress Claim No 1 for the sum of RM2,187,840 (AB8/6);

  (ii) Progress Claim No 2 for the sum of RM885,677.44 (AB8/19);

  (iii) Progress Claim No 3 for the sum of RM505,237.54 (AB8/110);

  (iv) Progress Claim No 4 for the sum of RM277,659.38 (AB8/164);

(v) Progress Claim No 5 for the sum of RM1,101,597.23 (AB9/7);

(vi) Progress Claim No 6 for the sum of RM1,396,506.87 (AB9/79);

(vii) Progress Claim No 7 for the sum of RM1,384,775.22 (AB9/149);

(viii) Progress Claim No 8 for the sum of RM895,816.38 (AB9/256);

(ix) Progress Claim No 9 for the sum of RM2,275,275.22 (AB10/7);

(x) Progress Claim No 10 for the sum of RM1,147,681.01 (AB10/109); and

(xi) Progress Claim No 11 for the sum of RM1,607,107.95 (AB10/183).

(d) there are two Progress Claims for Riverbank Protection Works:

(i) Progress Claim No 1 for the sum of RM1,554,035.73 (AB10/234); and

(ii) Progress Claim No 2 for the sum of RM184,259.27 (AB10/246).

(e) the following are G&P's certification:

(i) G&P's Interim Certificate for Progress Claim No 1 for the sum of RM2,187,840 (AB8/4);

(ii) G&P's Interim Certificate for Progress Claim No 2 for the sum of RM885,677.44 (AB8/15);

(iii) G&P's Interim Certificate for Progress Claim No 3 for the sum of RM505,237.54 (AB8/108);

(iv) G&P's Interim Certificate for Progress Claim No 4 for the sum of RM277,659.38 (AB8/162);

(v) G&P's Interim Certificate for Progress Claim No 5 for the sum of RM1,101,597.23 (AB9/5);

(vi) G&P's Interim Certificate for Progress Claim No 6 for the sum of RM1,396,506.87 (AB9/77);

(vii) G&P's Interim Certificate for Progress Claim No 7 for the sum of RM1,384,775.22 (AB9/147);

(viii) G&P's Interim Certificate for Progress Claim No 8 for the sum of RM895,816.38 (AB9/254);

(ix) G&P's Interim Certificate for Progress Claim No 9 for the sum of RM2,275,275.22 (AB10/5);

(x) G&P's Interim Certificate for Progress Claim No 10 for the sum of RM1,147,681.01 (AB10/107);

(xi) G&P's Interim Certificate for Progress Claim No 11 for the sum of RM1,607,107.95 (AB10/181).

(xii) G&P's Interim Certificate for Interim Certificate No 1 for the Riverbank Protection Works for the sum of RM1,554,035.73 (AB10/232); and

(xiii) G&P's Interim Certificate for Interim Certificate No 2 for the Riverbank Protection Works for the sum of RM184,259.27 (AB10/244).

(f) payments made by the second plaintiff to the contractor FCY Construction Sdn Bhd were testified to by PW1 Long Mutalib and PW2 Liang and substantiated by copies of cheques in AB8/1, AB8/13, AB8/104, AB8/158, AB9/1, AB9/73, AB9/143, AB9/250, AB10/103, AB10/228, AB9/250; and

(g) eight videos and 16 photos in Part B document in AB22.

See also plans and drawings tendered as exhs P4, P5 and P6. All the abovementioned facts and contemporaneous documents were testified to by PW1 Long Mutalib in his evidence.

[38] On 29 May 2017 the lease of 21 years was issued by Sepang Land Office to the second plaintiff in respect of the area of the State land occupied by the Labu pump house (WS-PW1 Long Mutalib Q&A18; AA1/92). However, until the date of full trial, the third defendant (PTD Kuala Langat) has still not issued any lease of 21 years in respect of the Langat pump house (the first Langat intake) or the second Langat intake. The second Langat intake is still on TOL issued by the third defendant (PTD Kuala Langat). The abovementioned facts were not disputed or contradicted by the defendants.

LEGAL PRINCIPLES

[39] Section 22 of the National Land Code provides that:

> No officer appointed under this Part shall be liable to be sued in any civil court for any act or matter done, or ordered to be done or omitted to be done, by him in good faith and in the intended exercise of any power, or performance of any duty, conferred or imposed on him by or under this Act.

'This Part' in s 22 refers to Part Two — Administration, and it covers ss 6 to 39. 'Officer appointed under this Part' in s 22 includes State Director of Lands and Mines (ss 8 and 12), director of survey and mapping (ss 11 and 12), registrar of titles (s 12(a)), land administrators (s 12(b), settlement officers and survey officers (s 12(b)).

[40] Notwithstanding s 22 of the NLC, there are decided cases of the

appellate courts which held that the land office, land administrator and the registrar of titles have statutory duties and owe certain duty of care to landowners in some exceptional situations. This means that the protection of officers under s 22 of NLC is not comprehensive or absolute even in situation where the officers have acted in good faith.

[41] From the decided authorities, it has been held that the land office owes a duty of care to landowners which includes taking reasonable steps to adequately protect the land owner's rights. This principle was decided by appellate courts in cases including:

(a) Court of Appeal in *Pendaftar Hakmilik Negeri Selangor & Ors v Shaifulizam bin Mohd Saleh & Anor and another appeal* [2020] 5 MLJ 1; [2020] 5 CLJ 595 in which the Court of Appeal confirmed the negligence on the part of the land office as follows:

> [38] Such acts and omissions on the part of the land office amount to improper conduct and these improper conduct of the land office reflect bad faith on their part which, in our view, clearly show negligence on their part. Further, the non-compliance of the NLC shows a breach of their statutory duty which is equally a breach of a common law duty of care. The land office has failed in our view to properly keep land title details and land titles secure in the manner required by the NLC. In *Pendaftar Hakmilik, Pejabat Pendaftaran Wilayah Persekutuan Kuala Lumpur & Anor v Poh Yang Hong* [2016] 6 MLJ 413; [2016] 9 CLJ 297, the Federal Court had, inter alia, held that the administrative shortcoming on the part of the Land Administrator or Registry amounts to negligence.

(b) *Pendaftar Hakmilik Negeri Selangor v Caesius Development Sdn Bhd & Ors and another appeal* [2020] MLJU 25; [2020] 3 CLJ 327 where the Court of Appeal stated the land office's duty of care as follows:

> [39] As a keeper of all land titles, for a particular State (in this case Selangor) it is reasonable to impose upon the land office, including the seventh defendant, a duty of care towards all land owners, to ensure that the landowners' interests are well protected and safeguarded. The land office, including the seventh defendant, has to ensure that the law and proceedings are followed strictly, failing which it can cause the landowners losing their lands.

(c) in *Pendaftar Hakmilik Negeri Selangor & Ors v Shaifulizam bin Mohd Saleh & Anor and another appeal* [2020] 5 MLJ 1; [2020] 5 CLJ 595 the Court of Appeal held that the land administrator has a specific statutory duty to serve Form 5F (notice to collect the issue document of title) upon the landowner. The Court of Appeal held that failure on the part of the land administrator to serve the statutory notice was a breach of statutory duty which rendered him liable to the landowner (see paras [31] to [36] of the judgment).

[42] In our present case the defendants rely much on s 22 of the NLC and on decided cases which held that a mere holder of TOL has no legal right to insist on renewal of TOL or to claim compensation for cancellation of the TOL. The decided cases relied upon by the defendants for the legal position that the State Authority has no duty to renew a TOL or to claim compensation for cancellation of TOL include *P&A Systech Sdn Bhd v Kerajaan Negeri Kedah Darul Aman* [2018] 1 LNS 845 (HC), *Blue Ocean Biotech Sdn Bhd v Pengarah Tanah dan Daerah Galian Negeri Perak & Ors* [2018] MLJU 611; [2018] 9 CLJ 661 (HC), *Kayangan Mentari Sdn Bhd v Pengarah Tanah dan Galian Selangor & Ors* [2016] MLJU 489; [2016] 1 LNS 977 (HC).

[43] The defendant also relied on decided cases which held that until and unless the State Authority has actually alienated the land to the applicant by having it registered in the applicant's name, the mere fact that the State Government has given an approval for such intended alienation does not make the applicant the beneficial owner of the land: *North East Plantations Sdn Bhd lwn Pentadbir Tanah Daerah Dungun dan satu lagi* [2018] supp MLJ 293; [2011] 4 CLJ 729 (FC). In *North East Plantations* case the Federal Court also held that whether or not the doctrine of legitimate expectation applies depends on the facts of each case, and it cannot and should not override the express statutory power vested in the State Authority: see para [29] of the judgment. In *YKK (M) Sdn Bhd v Pengarah Tanah dan Galian Johor* [2021] 6 MLJ 496; [2021] 8 CLJ 179 the Federal Court held that a State Government's contract term cannot override the express provisions of NLC and that the State Authority cannot contractually fetter its powers of discretion under the express provisions of the NLC. The Federal Court held that 'Although the principle of legitimate expectation has been accepted in Malaysian jurisprudence, the State Authority does not owe the plaintiff legitimate expectation as the NLC expressly provides that rights of a person to land exists only after the land has been registered, and such doctrine cannot override the express statutory vested in the State Authority' (para [100] of the judgment).

[44] Decided cases also held that the State Authority and Menteri Besar are separate legal entities and that the State Authority is not bound by the Menteri Besar's promise made in his personal capacity: *Hamdan bin Johan & Ors v FELCRA Bhd & Ors* [2010] 8 MLJ 628; [2010] 3 CLJ 474 (HC), *LBCN Development Sdn Bhd & Anor v Pengarah Tanah dan Galian Selangor & Ors* [2014] 3 MLJ 445; [2014] 3 CLJ 970 (CA), *Pentadbir Tanah dan Daerah Petaling & Ors v Bandar Utama City Corp Sdn Bhd (previously known as Damansara Jaya Sdn Bhd) & Anor and another appeal* [2021] 4 MLJ 689; [2021] 5 CLJ 480 (CA).

[45] The defendants also cited authorities which decided that upon expiry of TOL the licensee has no claim in law or in equity for structures and improvements made upon such land and that the occupier makes such expenditures upon its own accord and risk: *Lebbey Sdn Bhd v Chong Wooi Leong & Anor and other applications* [1998] 5 MLJ 368; [1998] 1 CLJ 1072 (HC), *Kayangan Mentari Sdn Bhd* (HC), *Majlis Amanah Rakyat (MARA) v Tam Seek Hong & Ors* [1994] 3 CLJ 64 (HC), *Blue Ocean Biotech Sdn Bhd*'s case.

ANALYSIS OF EVIDENCE, FACTS AND ISSUES IN OUR PRESENT CASE

[46] From the entirety of the evidence adduced in our present case this court finds that the nature and character of the entirety of transaction made between the plaintiffs and the defendants is that of a package deal investment for a new glove manufacturing factory at Sepang District and its operations. This package deal investment would only be feasible and practically possible with fulfilment of all the following important and essential features:

(a) construction and completion of two pump houses at lands fronting the Labu River and the Langat River respectively;

(b) licence by Lembaga Pengurusan Air Selangor to extract water from Labu River and Langat River for use in the new factory's glove manufacturing operations;

(c) laying and operation of the electricity cables and water pipelines at various lands to connect the new factory to the two pump houses; and

(d) purchase of land for the new factory site and the construction and completion of a new factory at Sepang District for the glove manufacturing operations at their costs and expenses.

[47] If any of the four important and essential features stated in the immediately foregoing paragraph or its necessary constituents is absent or is made known would be absent at the inception of the proposed project, then the entire investment package and decision would be a no-go from day one, and there would not be any new factory for glove manufacturing at Sepang District today.

[48] Knowing full well that each of the aforesaid important and essential features and their constituents are necessary for the proposed project, the first defendant/State Government in order to attract investments to the State of Selangor agreed in principle and in writing that the first defendant and its various departments and agencies would provide the following features and/or constituents necessary for the proper completion and operations of the proposed new glove manufacturing factory at the Sepang District in the State:

(a) the State Government agreed in principle that a parcel of the State land fronting the Langat River would be leased to the plaintiffs for 21 years for the site of one of the two pump houses needed for the operations of the proposed new glove manufacturing factory;

(b) the State Government would facilitate the pipeline construction and operation by granting lease, easement and/or right of way for the pipelines which would be laid at various lands to connect the new factory to the two pump houses; and

(c) the State Government through Lembaga Pengurusan Air Selangor would give the plaintiffs a licence to extract water from Labu River and Langat River for use in the new factory's glove manufacturing operations.

[49] With the in-principle agreement of the State Government in place on the immediately aforesaid essential features, the plaintiffs proceeded to carry out and complete the plaintiffs' side of the other essential features including:

(a) the plaintiffs purchased land for the new factory site (at purchase price of about RM98m) and undertake the design, construction and completion of a new glove manufacturing factory at Sepang District (at the costs of about RM2.2 billion);

(b) the plaintiffs purchased land required for the site of the pump house at the Labu River;

(c) the plaintiffs undertook the design, construction, completion and operations of the two pump houses (one on the plaintiff's newly-purchased land at the Labu River and the other at the first defendant's land provided by the first defendant through a 21 year lease); and

(d) the plaintiffs undertook the design, construction, completion and operations of the electricity cables and water pipelines at various lands (connecting the new factory and the two pump houses) provided by the defendants via lease and/or right of way for 21 years.

[50] All the necessary approvals of the governmental authorities, including the State governmental authorities, were obtained by the plaintiffs before they undertook the design, construction, completion and operations of new glove manufacturing factory, the two pump houses and the electricity cables and water pipes connecting the new factory to the two pump houses.

[51] In the circumstances this court finds that the material facts in our present case are not in pari materia with any of the decided cases cited and relied upon by the defendants.

[52] The material facts in decided cases cited by defendants in connection with the statutory powers of the State Authority in relation to land can be summarised below:

(a) *Hotel Sentral (JB) Sdn Bhd v Pengarah Tanah dan Galian Negeri Johor, Malaysia & Ors* [2017] 5 MLJ 116; [2016] 3 CLJ 931 (HC): a neighboring hotel owner's application to challenge the State Authority's decision to revoke the road reserve and thereafter to alienate to the fourth respondent was dismissed by the High Court;

(b) *P&A Systech Sdn Bhd v Kerajaan Negeri Kedah Darul Aman* [2018] 1 LNS 845: the High Court dismissed the plaintiff's claim on the ground that although the plaintiff was issued a temporary occupation licence ('TOL'), it did not fulfil some of the requisite terms in the TOL and also did not obtain Form 4C for removal of sand from the land, leading to the valid cancellation of the TOL;

(c) *Blue Ocean Biotech Sdn Bhd v Pengarah Tanah dan Daerah Galian Negeri Perak & Ors* [2018] MLJU 611; [2018] 9 CLJ 661: the High Court dismissed the plaintiff's claim against the PTG for refusal to renew the TOL which had expired and the subsequent alienation of the same land to the third defendant;

(d) *Kayangan Mentari Sdn Bhd v Pengarah Tanah dan Galian Selangor & Ors* [2016] MLJU 489; [2016] 1 LNS 977: After the expiry of the TOL on the State land where the plaintiff built and operated a restaurant, the State Government refused to renew or extend the TOL to the plaintiff and instead, a TOL for the same land together with the same restaurant building thereon was granted to another person with terms that the new TOL-holder could rent the land and restaurant building to the plaintiff. The plaintiff's claims to challenge the State's decision and for damages were dismissed by the High Court;

(e) *North East Plantations Sdn Bhd lwn Pentadbir Tanah Daerah Dungun dan satu lagi* [2018] supp MLJ 293; [2011] 4 CLJ 729: The State Government approved the plaintiff's application for alienation of state forest land in 11 lots totalling 10,000 acres. Three of the lots were issued with land titles after the plaintiff paid the premiums which were accepted by the State Government. Subsequently, the new State Government revoked the alienation approval and refused to accept the plaintiff's premium payment for the balance eight lots and refused to issue land titles for the balance eight lots to the plaintiff. The Federal Court held that s 78(3) of the NLC impliedly gave the power to the State to refuse to accept the premium payment and that as long as the land has not been registered in the name of the plaintiff, the State could revoke the previous approval of alienation and refuse to accept the premium payment. The Federal Court also held that the State's decision to revoke

the previous approval in light of its new policy of preservation of forest was a valid and intra vires decision: see para [36](iv) of the judgment;

(f) *YKK (M) Sdn Bhd v Pengarah Tanah dan Galian Johor* [2021] 6 MLJ 496; [2021] 8 CLJ 179: The State Authority alienated a piece of land in the Larkin industrial area to Sri Kemajuan Co Ltd for 60 years with an option clause to renew for a further 30 years. The plaintiff purchased the land with unexpired lease period of 40 years. Subsequently, the defendant informed the plaintiff that they would issuing notices to all factory owners in the area that the defendant would not be renewing leases in the area in order to give effect to the State Government's future development plans for the area. About a year later, the defendant informed the plaintiff that the State Government would convert the Larkin Industrial Area into a housing area and had accordingly frozen all lease renewal applications. The Federal Court held that the option clause in the lease is contrary to the provisions of the NLC as it purported to fetter the statutory powers of the State Authority and therefore was unenforceable against the State Authority;

(g) *Pentadbir Tanah dan Daerah Petaling & Ors v Bandar Utama City Corp Sdn Bhd (previously known as Damansara Jaya Sdn Bhd) & Anor and another appeal* [2021] 4 MLJ 689; [2021] 5 CLJ 480: Two neighbouring developers entered into an agreement for part of the applicant's land to be used a temporary access road until the completion of an alternative access. The applicant's layout plan or development was accordingly amended and approved by the local council. After the completion of the alternative access, the applicants closed the road to public. Subsequently the State Government compulsorily acquired the land at the temporary access road. In judicial review to challenge the validity of the compulsory acquisition, the Court of Appeal held that the compulsory acquisition was valid and the State Government's statutory power of compulsory acquisition was not curtailed by the private agreement between the two developers or by the layout approval;

(h) *Papoo v Veeriah* [1965] 1 MLJ 127: Goods J held that a licensee of a TOL land who built a dwelling house thereon did it at his own risk as such building belonged to the State, unless there is a contract to the contrary to which the State Government was a party. The court held that TOL was personal to holder and could not form part of the estate of the deceased TOL holder; and

(i) *Majlis Amanah Rakyat (MARA) v Tam Seek Hong & Ors* [1994] 3 CLJ 64: The High Court held that the defendants who occupied the said land on TOLs cannot acquire a right to be compensated by either a subsequent holder of a TOL or by a subsequent registered proprietor for any expenses that the defendants might have incurred over the said land during their period of occupation under TOLs.

As can be seen from the summary of material facts above, none of the abovementioned decided cases relate to non-statutory acts and steps of a State Government in promoting and attracting investments to the State. All the abovementioned decided cases relate to the State Government's alienation of land per se, the land office's issuance of TOL per se, a clause in the terms of the lease which purports to curtail the statutory powers of the State Authority and/or the State Government's statutory power of compulsory acquisition. The peculiarities of the material facts in our present case are different from the material facts in the decided cases relied upon by the defendants here.

LEGITIMATE EXPECTATION, BREACH OF STATUTORY DUTY AND NEGLIGENCE

[53] It is settled law that all common law judgments are to be read in the light of the factual matrix of the case in which the particular judgment is pronounced. The following decisions of appellate courts have laid down the rule that the words and expressions used in the court judgment must be read in the context of the factual matrix of the case:

(a) every judgment of the court must be read as governed by the facts of the case: *Quinn v Leatham* [1901] AC 495 at p 506;

(b) every case is decided on its own facts and must be read accordingly: per Viscount Simon in *Harris v Director of Public Prosecutions* [1952] 1 All ER 1044 at p 1050D;

(c) 'all judgment under the common law system must be understood *secundum subjectectum materiam*' ie judges, in pronouncing principles, have in mind the characteristics present in the case, which characteristics may be absent in other cases': per Lord Diplock in *Mutual Life & Citizens' Assurance Co Ltd & Another v Clive Raleigh Evatt* [1971] AC 793, at p 802D-F .

[54] In para [52] above, this court has summarised the main features and material facts in the decided cases relied upon by the defendants here. Applying the immediately foregoing rule of reading the common law judgments, the statements of principles in the aforesaid decided cases are to be read in the context of the factual matrix of those cases, and the material facts in those decided cases can be distinguished from the material facts in our present case.

[55] This court accepts the defendants' submission that a mere licensee of a TOL has no legitimate expectation for a renewal of the TOL by the land office upon the expiry of the term and that the licensee has no right to claim compensation for any structure or building erected on the TOL land upon the expiry of the TOL, as held by the various decided authorities cited by the

defendants. However, none of the decided authorities has held that even if the express terms of the TOL stipulates for compensation upon its expiry, no compensation would still be recoverable. On the contrary, Goods J in *Papoo v Veeriah* observed to the effect that where the express terms of the TOL provides for compensation in the event of termination and the State Government is a party thereto, the TOL holder would have the right to sue the State Government for such compensation pursuant to the express term.

[56] In our present case the plaintiffs are not claiming for renewal of the TOL in respect of the first Langat intake site which was taken over by Lembaga Lebuhraya Malaysia and/or Maju Expressway Sdn Bhd for the MEX II highway. Neither has the plaintiffs in our present case claimed for the value of the structures or building abandoned at the first Langat intake site when the plaintiffs had to relocate to the new second Langat intake site.

[57] The words 'proposed investment' ('cadangan pelaburan') appeared in various letters and documents at the various stages of meetings and discussions between the plaintiffs and the defendants: see, for example, Lembaga Urus Air Selangor's letter dated 1 February 2013 which was also copied to Unit Perancang Ekonomi Negeri or UPEN (AB1/7), PTD Sepang's letter dated 7 June 2013 (AA/7), Jabatan Pengairan dan Saliran Negeri Selangor's letter dated 12 March 2013 which was also copied to UPEN (AB1/9–10), Lembaga Urus Air Selangor's letter dated 17 April 2013 which was also copied to UPEN, the State Secretary, the second defendant, the State PTG, etc (AB1/13–5), etc. What the plaintiff's in gist complain of in our present case is that in attracting and encouraging the plaintiffs to invest a hefty sum of money (about RM2.2 billion) by deciding to build, complete and operate a new glove manufacturing factory in the Sepang District in the State of Selangor which would bring much economic and social benefits to the State in the long term, the defendants (as parts of the constituents of the important and essential features of the proposed new factory project) promised and agreed to provide the first Langat intake site land to the plaintiffs with a lease of 21 years, but later after the completion of the new factory and the pump houses required or compelled by conduct the relocation of the pump house at the Langat River from the first Langat intake site to the new second Langat intake site, thereby causing damages and losses to the plaintiffs. This, according to the plaintiffs, was in breach of legitimate expectation, statutory duty and/or duty of care under the tort of negligence.

[58] While the decided authorities seem to have narrowed down the scope of a cause of action on legitimate expectation in land cases involving the State Government or the officers appointed under the National Land Code, there is no clear decided authority which has held that a cause of action on legitimate expectation in land cases involving the State Government or the officers appointed under the National Land Code can never arise under whatever

circumstances or in exceptional circumstances similar to those of our present case. The decided authorities cited by the defendants seem to exclude the legitimate expectation from cases with factual situations where the TOL or the promise on road or to issue title were stand-alone matters which do not form a constituent of a bigger scenario of attracting investment upon agreed terms or where there was an isolated promise made by individual in personal capacity without the endorsement of the State Authority. Be that as it may, this court prefers to avoid the slippery road of deciding the present case based on a cause of action on legitimate expectation — a lofty doctrine with much ambiguity and many uncertainties in application. Rather, this court would proceed to decide the present case on the basis of negligence and breach of statutory duty.

[59] Based on the decided authorities referred to in para [41] above, this court is of the considered view that in spite of the provisions in s 22 of the NLC, this s 22 of the NLC does not confer protection or immunity from liability upon the State Government or its officers appointed under the NLC in all and every factual situation. The appellate courts' decisions held that the land office owes a duty of care to landowners which includes taking reasonable steps to adequately protect the land owner's proprietary rights. In their decisions the appellate courts have not limited the land office's duty of care exclusively only to keeping correct land title records or to avoiding the issuance of false titles.

[60] In our present case, substantial constituent parts of the State Government's package of agreement and promises towards the fruition, completion and operations of the proposed new glove manufacturing factory are promises and obligations which are not included under any part of the National Land Code. The constituent promises made by the State Government in our present case for the attraction of this huge investment to Sepang District in the State were acts and steps of investment promotion and attraction to the State, which acts and steps did not fall within the scope of duties or powers or functions under the NLC. The promise of the first Langat intake site for 21 years of lease is only one of the many constituents of the State Government's package of agreement and promises. In the circumstances, this court holds that the State Government and the land office in our present case cannot hide behind the limited protection of s 22 of the NLC.

[61] Moreover, s 22 qualifies the limited protection by requiring that the act or omission be done in good faith. The term 'good faith' also appears in the proviso to s 340(2) of the NLC. In cases relating to s 340(2) of the NLC, the appellate courts have held that a person in good faith does not include a person who is careless or who has been negligent. In the case of *Au Meng Nam & Anor v Ung Yak Chew & Ors* [2007] 5 MLJ 136; [2007] 4 CLJ 526 (which was cited with approval by the Federal Court in *T Sivam a/l Tharamalingam (as representative/administrator for the estate of Nagamuthu a/l Periasamy, deceased)*

v Public Bank Bhd [2018] 5 MLJ 711; [2018] 6 CLJ 1), where the Court of Appeal held that a purchaser in good faith does not include a purchaser who is careless or who had been negligent, in the following words:

> [43] Further, had the evidence adduced in this case been properly considered and assessed by the learned trial judge, a reasonable inference would be that the first defendant knew at the time he bought the said land, the purchase price was below the market value. But he wanted to take advantage of the low price. *He did a fast track to complete the purchase. In doing so he disregarded his obligations to investigate the alleged proprietors and the genuineness of the documents. My respectful view is that a purchaser in good faith does not include a purchaser who is careless or who had been negligent*. In *Oliver v Hinton* [1899] Ch 264 Lindley MR said:
>
> > To allow a purchaser who acts with such gross carelessness to deprive a prior innocent mortgage of her priority would be the greatest injustice.
>
> So too here. *The first defendant is under the obligation to investigate properly all matters relating to the sale of the land and not to just blindly accept what was claimed by the 'vendors' as correct and genuine*. When he failed to take the ordinary precautions which ought to be taken in such a matter he is not entitled to the protection of the court. (Emphasis added.)

[62] In *Au Meng Nam*'s case, it was also held that the evidential burden of proof would fall on the person who was relying on the proviso to s 340(3) of the NLC to prove that he was a *bona fide* purchaser for valuable consideration ie the first respondent, and that the appellants do not have to prove that the first respondent was a party or privy to fraud or forgery.

[63] Likewise, a public officer under the NLC who has been negligent or grossly careless in his/her performance or purported performance of his/her duties under the NLC should not be held to have acted in good faith in performance or purported performance of such duties. And the party who alleges that he acts in good faith in an attempt to rely on the protection under s 22 of the NLC also bears the onus of proving good faith.

[64] If the court were to answer the main question posed in para [1] above in the affirmative, it would tantamount to saying that in Malaysia all the State Governments can, with impunity and free from any possible liability, make whatever promises and whatever representations they like in order to promote and attract investments to their respective States, with the likely ultimate consequences that the investors, be they local or foreign, would one day lose their confidence about investments in Malaysia because the State Government can make negligent or even misleading promises and representations without any legal liability whatsoever. If that be the state of our laws, we would as a nation wake up one day when it is too late to maintain or restore the confidence of the investors in coming to our country to invest and create jobs for our fellow citizens.

[65] In the premises, this court held that a state government who, in the course of promoting and encouraging investment by private company by making promise of a leasehold of a parcel of state land which is essential for the private company's construction and operation of a sizeable factory in the state, can be liable for negligence in making such promise in breach of its duty of care if it is discovered subsequent to the completion of the pump house thereat that the said parcel of state land has previously been *gazetted* or earmarked for an expressway construction, thereby resulting in the need to relocate and re-build another pump house at a different site and causing damages to the private company. In laying down a duty of care, the court should not exact a high or excessive standard of care upon the government officer who handles matters pertaining to investment promotion. What the court should impose is a *reasonable* standard of care based on the nature of the case and in the particular circumstances of each case.

[66] We now come to the factual issue of what caused the first Langat intake site to be approved by the defendants and used by the plaintiffs for the construction and completion of the first Langat intake pump house.

[67] From the evidence adduced, this court finds that the proximate cause for the first Langat intake site to be approved by the defendants and used by the plaintiffs for the construction and completion of the first Langat intake pump house was the written confirmation by the third defendant's agent (Kuala Langat Land Office) that the site for the first Langat intake was not subject to any land acquisition or intended land acquisition. As it was subsequently discovered after the completion of the pump house at the first Langat intake site, this written confirmation turned out to be an error or mistake. It goes without saying that if the third defendant were to timeously tell the plaintiffs that the site for the first Langat intake was subject to land acquisition or intended acquisition, the plaintiffs would not have constructed the said pump house at the site for the first Langat intake.

[68] We now consider the question whether or not the third defendant (Kuala Langat Land Office) was negligent in making the said written confirmation that the site for the first Langat intake was not subject to any land acquisition or intended land acquisition.

DUTY OF CARE

[69] Following the Federal Court's decisions in *Tenaga Nasional Malaysia v Batu Kemas Industri Sdn Bhd and another appeal* [2018] 5 MLJ 561 at p 586; [2018] 6 CLJ 683 at p 711 and *Pushpaleela a/p R Selvarajah & Anor v Rajamani d/o Meyappa Chettiar and other appeals* [2019] 2 MLJ 553 at para [115], this court finds that the reasonable foresight and proximity

requirements are present in our present case as the defendants could reasonably foresee that loss or damage would be caused to the plaintiffs if the defendants were to provide a wrong site to the plaintiffs for constructing the first Langat intake pump house and that the parties being directly involved in the package deal discussions and negotiations for a major investment in a new glove manufacturing factory, the parties were in a proximate relationship.

[70] As decided by the Federal Court the duty was to take reasonable care to avoid acts or omissions which the defendants could reasonably foreseen would be likely to injure their neighbour, ie the plaintiffs who were so closely and directly affected by the defendants' act that the defendants ought to have them in contemplation as being affected by them when directing the defendants' mind to the acts or omissions in question. There is nexus and proximity between the second plaintiff and the defendants as the promise and representation were made to the plaintiffs directly and further that the defendants had in fact Issued the TOL to the second plaintiff pending finalization of the 21 years lease (AA1/14–15); and informed the second plaintiff that the defendants were prepared to *gazette* the land reserve to be leased to the second plaintiff for 21 years (AA1/16–18).

[71] From the evidence adduced, the third defendant/land office knew that the subject land was needed by the plaintiff to construct and operate a pump house and a river water intake for a duration of many years and that it was essential that the subject land was one in respect of which the State Government through the land office could lawfully and effectively grant a lease of many years to the plaintiffs to enable the plaintiffs to operate the pump house and river water intake there. The third defendant also knew that if the plaintiffs were to construct the pump house and river water intake point at a site where the State Government has no right to grant a lease, the plaintiff would have to demolish the same and re-construct another pump house and intake point at a different location, thereby suffering loss or damages. In the circumstances, the plaintiffs were so closely and directly affected by the defendants' act that the defendants ought to have them in contemplation as being affected by them when directing the defendants' mind to the acts or omissions in question, ie in confirming the suitability of the location and land parcel to be approved to the plaintiffs for their construction and operation of the pump house and river water intake point for the proposed new rubber glove factory at Sepang.

[72] DW1 has confirmed during cross-examination as follows:

> PP: ... *Defendan-defendan adalah pihak berkuasa lah dan pihak yang mempunyai bidang kuasa untuk menentukan peraka mengenai tanah betul?*
>
> SDP: *Betul tuan*.

PP: *Maka ianya munasabahlah dan berpatutuan reasonable untuk plaintif-plaintif bergantung dan percaya kepada apa-apa yang dimaklumkan oleh defenden*, maknanya apa-apa yang dikatakan oleh defenden sebagai authoriti, ianya adalah munasabah dan berpatutan, reasonable untuk plaintif-plaintif percaya. betul?

SDP: Ya tuan.

[73] In the entire circumstances of the present case it is fair, just and reasonable that the law should impose a duty on the defendants as they, in the course of promoting and encouraging the plaintiffs to invest by building and operating a new rubber glove factory at Sepang and who are the authorities who ultimately grants the requisite approval, and further that it is reasonable for the second plaintiff to rely on the promise and representations made by the defendants who are the authorities that the second plaintiff would be allowed to operate the pump house and river water intake there and would be given a 21 years lease as an essential constituent of the operation of the new factory.

[74] In the premises, the defendants owed the plaintiffs a duty of care in the particular circumstances of the present case and by virtue of the nature of the investment package deal here.

STANDARD OF DUTY OF CARE

[75] As stated above, in laying down a duty of care in such cases, the court should not exact a high or excessive standard of care upon the government officer who handles matters pertaining to investment promotion. What the court should impose is a *reasonable* standard of care based on the nature of the case and in the particular circumstances of each case.

BREACH OF DUTY OF CARE

[76] From the evidence adduced, this court finds that the first and third defendants were aware of the MEX II Highway as there were processes for land acquisition undertaken for the MEX II Highway as the defendant's agencies were involved but this was not communicated to the department overseeing the TOL and lease. DW1 during cross-examination on 30 September 2021 confirmed as follows:

PP: yes yes yes, I understand, untuk buka fail tak ada, tapi dokumen-dokumen berkenaan untuk pengambilan tanah memang ada. Cuma tak ada fail untuk pewartaan highway sahaja, tapi process pengambilan tanah tujuan MEX2 ada betul?

SDP: Kalau saya boleh terangkan

PP: Betul atau tidak.

SDP: Betul Betul Cuma

PP: Ok alright, tapi tidak diberi perhatian unit yang memberikan TOL dan pajakan 21 tahun sebab pengambilan tanah itu adalah bahagain atau agensi lain. Betul?

SDP: Betul.

[77] From the evidence adduced, this court finds that the defendants failed to update their records pertaining to the gazetting and earmarking of the said land for MEX II Highway.

[78] In the evidence of the third defendant's relevant officer DW2 Sharina on 8 November 2021, she testified that from her checking of the records of the third defendant's land office records there was no land acquisition or intended acquisition in respect of the site for the first Langat intake, although there were land acquisition documents but no file for gazetting of the land acquisition was ever sent by the Federal KPTG Department to the State PTG Department or the Kuala Langat Land Office. DW1 in cross-examination on 30 September 2021 also testified that the third defendant's files did not contain any record of the LLM *gazette* on MEX II highway alignment. From the evidence adduced, this court finds that the third defendant knew there was previously an intended land acquisition for MEX II highway which affected the first Langat intake site but that as the acquisition *gazette* was not notified to the third defendant after the lapse of quite some time, the third defendant took it that there was no longer any land acquisition or intended acquisition in respect of the first Langat intake site. See the cross-examination of DW2 on 8 November 2021. In DW1 Nur Afida's evidence during cross-examination 0n 30 September 2021, she also confirmed that, the Minutes of Meeting held on 18 March 2016 (AA1/31–47) at p 42 item 2 showed that Lembaga Lebuhraya Malaysia informed the meeting that the MEX II highway alignment was *gazetted* at the federal level on 27 April 2000 and the process of gazetting the highway alignment was carried out by JKPTG. DW2 testified that JKPTG, the federal department, placed a representative in PTG Negeri Selangor and they had to communicate with each other on intended compulsory acquisitions or gazetting of highway alignments.

[79] At the very least, the third defendant in the circumstances should have written to LLM or MESB or to the Federal KPTG Department to seek clarification and confirmation on the *updated* status of land acquisition before giving a written confirmation to the State Government and the plaintiffs regarding the status of the land for the pump house site for the first Langat intake.

[80] Instead, DW2 in her *Lapuran* dated 28 January 2014 (AB1/40–46) and *Lapuran Penolong Pegawai Tanah* dated 9 May 2014 on behalf of the third defendant made a clear and specific confirmation that the subject land was a clean slate for issuance of TOL for pump house to be used in the plaintiffs'

proposed new factory operations: see AB1/63–69. When cross-examined on 8 November 2021, DW2 confirmed that these two reports included Plot A which referred to Lot 7572, the pump house site for the first Langat intake. DW2 on 8 November 2021 testified that file PTKLGT-F8/1/178 (stated in DW1's *Lapuran Penolong Pegawai Tanah* dated 9 May 2014 in AB1/64 item (e)) was the application for reservation of land for MEX highway project at Kuala Langat District, but she did not know who was given the duty to update the file. She also confirmed that members of the public had no access to the file. In the third defendant's Lapuran Penolong Pegawai Tanah in AB1/63 item 2(a) the third defendant specifically confirmed that 'Tanah yang dimaksudkan .... adalah Tanah Kerajaan yang boleh dikeluarkan LMS' and in item 2(f) thereof at AB1/64 the third defendant specifically confirmed the 'tanah lot 7572 tersebut termasuk dalam perancangan bagi pembinaan Lebuhraya Khusus Kuala Lumpur — KLIA pada tahun 2006. Walau bagaimanapun, jajaran laluan tersebut telah dipindahkan ke laluan jajaran yang lain dan lot 7572 tidak lagi terlibat dengan projek tersebut'. In item 7.6 at AB1/68, the third defendant concluded 'Permohonan ini boleh dipertimbangkan selepas mendapat ulasan daripada jabatan teknikal yang berkaitan. Dari segi jabatan tiada halangan ke atas permohonan ini memandangkan projek syarikat tersebut akan memberi impak ekonomi yang besar kepada negeri Selangor'. The contents of the second report were referred by the plaintiffs' counsel to DW1 during the cross-examination on 8 November 2021 and DW1 confirmed the contents as recorded.

[81] In the *Lapuran Penolong Pegawai Tanah* the third defendant also did not disclose the lack of proper file or records with the third defendant regarding the previous intended land acquisition of the said site for MEX II highway purposes and also did not suggest that the State Government or the plaintiffs should check and verify further with LLM or MESB regarding the updated status of land acquisition. Instead, the third defendant chose to confirm in writing the absence of land acquisition or intended acquisition and thereby gave the said site a 'clean slate' for the purpose of constructing and operating the plaintiffs' first Langat intake pump house there as part of the operations of the proposed new glove manufacturing factory.

[82] From the oral evidence of DW2 and the documentary evidence, this court finds that DW2 and the third defendant did not make any inquiry or verification with Lembaga Lebuhraya Malaysia (the Highway Authority of Malaysia) or Maju Expressway Sdn Bhd (the concession company for Kuala Lumpur — KLIA Expressway, also known as MEX Highway). From the evidence adduced, this Court finds that the third defendant and DW2 at the material time knew that Lembaga Lebuhraya Malaysia has been the highway authority in charge of highways and expressways (including MEX Highway) in Malaysia and that Maju Expressway Sdn Bhd is the concession company for

MEX Highway. In the circumstances, it can be factually concluded that in the absence of any clarification or verification from either Lembaga Lebuhraya Malaysia or Maju Expressway Sdn Bhd, the third defendant's confirmation in the *Lapuran Penolong Pegawai Tanah* that the subject land could be used for the first Langat intake and pump house site was based on an assumption that due to the lack of records in the third defendant's office and due to absence of notification of official *gazette* to the third defendant despite the passage of several years, the subject land was no longer required for the MEX II Highway although it was originally confirmed and earmarked for the said highway several years ago.

[83] After the preparation of the *Lapuran Penolong Pegawai Tanah* the third defendant proceeded to approve the subject land for the plaintiffs' construction and operation of the pump house and water intake. There is no evidence that the third defendant's *Lapuran Penolong Pegawai Tanah* was ever supplied to the plaintiffs. Even if it was supplied to the plaintiffs, any reasonable person, including the plaintiffs, who read the contents of the third defendant's *Lapuran Penolong Pegawai Tanah* would not have any doubt or query regarding the subject land being a clean slate for issuance of the lease and for operation of the pump house during the lease period of 21 years. In her evidence on 30 September 2021 DW1 also agreed that it was reasonable for the plaintiffs to believe the correctness of the information given by the defendants regarding land.

[84] In the considered opinion of the court, in the written confirmation of clean slate for the subject land to be used for the plaintiffs' first Langat intake ump house, the third defendant made an erroneous assumption in breach of duty of care on the part of the third defendant.

DAMAGE

[85] As it turned out, the plaintiffs were required to construct and complete another pump house at the Langat intake, namely the second Langat intake at a different site. This resulted in loss or damages in the form of additional set of design and construction costs which would not be incurred if not for the defendants' breach of duty.

CAUSE OF ACTION IN NEGLIGENCE

[86] In the entire circumstances of the present case this court finds that the first and third defendants are liable to the plaintiffs under the tort of negligence.

CAUSE OF ACTION IN BREACH OF STATUTORY DUTY

[87] As explained above, the gist of the plaintiffs' compliant in our present case is that the first Langat intake pump house site provided by the defendants was subsequently discovered to have been *gazetted* or reserved for the MEX II highway in spite of the written confirmation by the third defendant's agent (Kuala Langat Land Office) that the site for the first Langat intake was not subject to any land acquisition or intended land acquisition.

[88] There is no express provision in the NLC to require or stipulate for the third defendant's written confirmation of the land acquisition status of the land for the first Langat intake site. As such, the third defendant's written confirmation of the land acquisition status of the land for the first Langat intake site was not an act or omission done in the exercise or intended exercise of any duty under the NLC. Rather, it was a act or omission committed in the course of administrative or non-statutory functions as a department or agency of the State Government. In the premises, it is improper to describe such act or omission as any breach of statutory duty. Likewise, this also brings the third defendant's written confirmation of the land acquisition status of the land for the first Langat intake site to be an act or omission outside the ambit of s 22 protection of the NLC, as it was not an act or omission done in the exercise or intended exercise of any duty under the NLC.

[89] In the premises, the plaintiffs' purported cause of action in breach of statutory duty is not sustainable on the facts and circumstances of our present case.

DEFENCES OF THE DEFENDANTS

[90] The defences of the defendants can be grouped into the following categories:

(a) protection under s 22 of the NLC;

(b) no right to renewal of TOL or to get compensation for structures built on TOL land;

(c) the defendants have assisted in expeditiously getting an alternative land for the new second Langat intake site as the replacement for the first Langat intake site and that the plaintiffs, when applying for approvals for the new second Langat intake site, did not notify the defendants that they would claim compensation;

(d) doctrine of legitimate expectation is not applicable;

(e) the plaintiffs built the pump house structures in breach of the TOL terms and therefore cannot claim for the costs of such structures;

(f) TOL does not confer ownership and the plaintiffs have no locus standi to commence this suit because Lot 7572 and the land adjacent to Lot 6371 are owned by the State Government and not owned by the plaintiffs; and

(g) no negligence or breach of statutory duty.

[91] In the paragraphs above, this court has dealt with the issues relating to s 22 of the NLC, legitimate expectation, negligence and breach of statutory duty, and there is no necessity to repeat them here.

[92] As regards the defendants' allegation that the plaintiffs did not notify the defendants that they would claim compensation when they applied for approvals for the new second Langat intake site, this court accepts the plaintiffs' evidence that in the course of such steps PW1 Long Mutalib, the project manager of the second plaintiff, did in fact notify the defendants' representatives that the plaintiffs would claim compensation (see minutes of meeting held on 13 March 2017 in AA1/85). In any event, prompt notice of claim for compensation is not a necessary prerequisite for a claim for damages in the tort of negligence.

[93] The other defences of the defendants relate to TOL. As found by this court above, the plaintiffs' claims in our present case must be considered in light of the overall scenario of the package-deal investment project with multiple constituents, of which the TOL on the first Langat intake site was merely an interim part. This court accepts the plaintiffs' evidence that the TOL for the intake site is merely a temporary interim arrangement while waiting for the administrative steps to be processed and formalised in the issuance of the 21 year lease. This standard practice of the first defendant (the State Government) is also corroborated and confirmed by the fact that the 21 year lease for land adjacent to the Labu intake pump house was in fact formally issued by the Sepang Land Office before the expiry of the TOL for the Labu site in pursuance of the agreement and promise of the State Government, and that the 21 year lease and right of way for the electricity cables and water pipelines were also granted by the respective land offices to the plaintiffs (WS-PW1 Long Mutalib Q&A18; AA1/92). It is obvious that the 21 year lease was not issued for the first Langat intake site because of the post-construction discovery of the land acquisition of the same for the MEX II highway. In the circumstances of the present case, there is no statement, be it oral or written, from any representatives of the defendants that they definitely will not issue the 21 year lease for the new second Langat intake site. From the evidence and the conduct of the parties, this court can only infer that the temporary withholding of issuance of the 21 year lease for the new second Langat intake site is probably perceived by some as a bargaining chip pending the resolution of claims and disputes here. In the considered opinion of this court, the defendants cannot be

allowed to take the TOL issue in isolation and out of context of the overall scenario of the package-deal investment project here. The decided authorities cited by the defendants can be distinguished on the facts, as those cases did not deal with a situation of overall scenario of package-deal investment project wherein an interim TOL on a constituent was merely a temporary stop-gap measure to bridge the short interim period due to the defendants' practical inability to promptly perform its agreement on issuance of the promised 21 year lease. If an applicant or licensee's entire application for approval of the State Government were only for a TOL or a road reserve per se and in isolation without being combined or integrated with the multiple other constituents in a package-deal investment project, this court's decision would be similar to those of the courts in the decided authorities cited and relied upon by the defendants. However, the facts of those decided authorities bear no material similarity to the material facts and peculiar features in our present case.

[94] This court also finds that the very purpose of the TOL land in our present case was to enable the plaintiffs to quickly embark on the construction, completion and operation of the pump house. In the TOL form issued by the office of the third defendant (Kuala Langat Land Office), it is specifically or expressly written as a special term that the purpose of the TOL land was for construction of pump house (see AA/14–15). This express or specific term overrides the general printed terms in the standard printed form. In the circumstances, the plaintiffs have not committed any breach of the TOL terms by constructing the pump house and other related structures at the first Langat intake site. Moreover, the relevant design plans and drawings for the construction of the first Langat intake pump house and related structures were approved by the relevant governmental authorities including the State governmental authorities before the plaintiffs constructed and completed them.

[95] In the particular circumstances of our present case, this court finds and holds that none of the defences raised by the defendants is valid or sustainable on the peculiar facts of our present case. In the circumstances, this court held that the plaintiffs have established the liability in negligence against the first defendant (the State Government) and the third defendant (Pentadbir Tanah Kuala Langat).

HEADS OF DAMAGES AND QUANTUM OF DAMAGES

[96] The heads and quantum of damages pleaded by the plaintiffs are as follows:

No	Element	RM
(a)	General and Preliminaries	1,393,472.00
(b)	Excavation, Foundation treatment, road, drainage and miscellaneous work at new intake	1,092,397.00
(c)	Langat River raw water intake structure	4,674,862.00
(d)	Langat River raw water main pipework	1,062,862.00
(e)	Intake TNB	467,037.00
(f)	Electrical Component	1,536,670.00
(g)	Relocation of electrical system instrument and control	60,500.00
(h)	Relocation of Langat River raw water pumping system	487,200.00
(i)	Mechanical works	1,080,000.00
(j)	Acceleration of works for early operating	635,000.00
(k)	Performance Bonus	-
(l)	Survey (Studio Ukur)	19,186.55
(m)	SI works (North Soil)	37,707.30
(n)	Riverbanks Protection works	1,738,295.00
	Total	14,285,188.85

[97] In the circumstances of the present case this court finds that is was foreseeable or at least reasonably foreseeable by the defendants that if the defendants or any of them provided the plaintiffs with a piece of land for construction and operation of the pump house and that piece of land in one which the defendants no longer had power or authority to provide for such pump house purposes, and the plaintiffs acted on it and build a pump house on such land, the plaintiffs would subsequently have to prematurely relocate the pump house to another site at additional or wasted design and construction costs.

[98] In preparation for the full trial, the plaintiffs have filed and served Scott Schedules on quantum items pursuant to the court's pre-trial directions and the defendants' experts from Jabatan Kerja Raya (JKR) were also given the opportunity to comment and did comment on the Scott Schedules. The JKR officers were also allowed to sit together with the defendants' counsel at the full trial sessions on quantum issues to assist and advise the defendants' counsel at

the full trial. The court, in the presence of both parties' counsel and witnesses, also viewed the eight videos (exh 'P7') of the completed second Langat intake pump house and related structures and facilities. This court heard the evidence of witnesses including PW1 Long Mutalib and PW2 Liang Ize Meng @ Liang Tze Meng on quantum of damages.

[99] The following Scott Schedules on quantum items were filed and served by the plaintiffs and commented by the defendants in respect of the costs of design, construction and completion of the new second Langat intake:

(a) Scott Schedule (C1 — General and Preliminaries): marked as 'SSC1';

(b) Scott Schedule (C2 — Excavation, Road, Drainage and Miscellaneous Work): marked as 'SSC2';

(c) Scott Schedule (C3 — Raw Water Inlet Structure & intake Plant): marked as 'SSC3';

(d) Scott Schedule (C4 — TNB and Electrical): marked as 'SSC4';

(e) Scott Schedule (C5 — Pipeworks): marked as 'SSC5';

(f) Scott Schedule (E1 — Electrical): marked as 'SSE1';

(g) Scott Schedule (E2 — Instrumentation and Control System): marked as 'SSE2'; and

(h) Scott Schedule (M1 — Mechanical Equipment): marked as 'SSM1'.

[100] The defendants' additional comments on the quantum items were also filed and served as the defendants' Scott Schedule marked as 'SSD'.

[101] In Q&A 25 of WS-PW1 Long Mutalib, PW1 summarised the total costs of construction of the new second Langat intake as RM13,760,000 from the quantum evidence given by PW1 Long Mutalib and PW2 Liang Tze Meng and which correlated to the items in Scott Schedules SSC1 to SSC5, SSE1, SSE2 and SSM1. The breakdowns of RM13,760,000 are as follows:

	Description of Heading	Amount in RM
C1	General and Preliminaries	1,393,472
C2	Excavation, Foundation Treatment, Road, Drainage and Misc. Works	1,092,397
C3	Raw Water Inlet Structure and intake Plant	4,674,862
C4	TNB and Electrical Building	467,037
C5	Pipe Works	1,062,862
E1	Electrical	1,332,270
E2	System Instrument and Control	264,900

M1	Mechanical	2,837,200
	Acceleration of works for system operating (9 months) and external works (+ 3 months)	635,000
	TOTAL	13,760,000

[102] In our present case the plaintiff has produced numerous contemporaneous records and documents on quantum of losses and damages, including the letters of appointment of design consultants, the design plans and drawings, construction contracts, contractor's progress claims, consultants' progress certificates, payment records, etc. The contractor's representative PW2 Liang Tze Meng has also testified that the contractor has received the full payments for the works on the first Langat intake works as well as on the new second Langat intake works. The plaintiff's contemporaneous records and documents on quantum evidence can be found in Agreed Bundles Part B marked as 'AB1' to 'AB-22'. Both PW1 Long Mutalib and PW2 Liang Tze Meng have testified at length and in great detail as to the various items of design and construction costs in their witness statements marked as WS-PW1 and WS-W2 respectively and in their oral evidence at the full trial.

[103] In the course of the full trial on quantum items it transpired that there were several items of upgrading carried out by the plaintiffs in the design and construction of the new second Langat intake plant as compared with the first Langat intake plant.

[104] After have heard and considered the witnesses' evidence and the counsel's respective submissions on quantum items, this court finds that the plaintiffs have proved on a balance of probabilities the damages in the form of additional costs or wasted costs of design, construction and completion of the Langat pump houses, intake structures and related facilities as a result of the relocation of the Langat intake, except that some of the items of costs should be dropped or excluded from the plaintiffs' claims herein because they constituted upgrading costs or costs which would have to be incurred even if there was no relocation of the pump house or intake structure.

[105] In the findings of this court, the items of costs which should be dropped or excluded from the plaintiffs' claims of additional or wasted costs due to the relocation of the Langat intake are as summarised below together with the brief reasons for dropping or exclusion:

Item and Description	Amount to be dropped or excluded (RM)	Reason(s) for dropping or exclusion
Item 9 of SSM1: dual flow travelling band screen	750,000	As conceded by PW1 on 14 December 2021, this item was dropped because the trash screen at the first Langat intake was dismantled and retrieved by the plaintiffs. This trash screen was not lost or wasted despite the relocation of pump house.
Item 20 in SSM1: 7.5T overhead travelling crane	270,000	As conceded by PW1 on 14 December 2021, this item was dropped because the 7.5T crane is an upgrading from the original 3T crane at the first Langat intake. Also, much of the original 3T crane could be retrieved and is not wasted.
Item 41 in SSE1: 450KVA standby genset	380,000	As conceded by PW1 on 14 December2021, this item was dropped because the 450KVA genset is an upgrading from the original 300KVA genset at the first Langat intake. Also, the original 300 KVA genset could be retrieved and is not wasted.
Item 39 in SSE1: IP54, Form 3B, 800 Amp 400V Main Switchboard /MCC	395,000	As conceded by PW1 on 14 December 2021, this item was dropped because the 450KVA genset and its related cabling and switchboard constituted an upgrading from the original 300KVA genset at the first Langat intake.

Item 46 in SSE1: cabling for 450KVA standby genset to AMF panel	48,800	As conceded by PW1 on 14 December 2021, this item was dropped because the 450KVA genset and its cabling constituted an upgrading from the original 300KVA genset at the first Langat intake.
Item 47 in SSE1: cabling for 450KVA standby genset from AMF panel to 400V MSB/MCC	48,800	As conceded by PW1 on 14 December 2021, this item was dropped because the 450KVA genset and its related cabling constituted an upgrading from the original 300KVA genset at the first Langat intake.
Item 52 in SSE1: Power and control cabling from from 400V MSB/MCC to Raw Water Pump No 1	33,000	As conceded by PW1 on 14 December 2021, this item was dropped because the 450KVA genset and its related cabling constituted an upgrading from the original 300KVA genset at the first Langat intake.
Item 12 of SSM1: sand educator system with two pumps	80,000	This court finds that this is an upgrading item for bigger volume of water compared with the original first Langat intake. The pumps in the original first Langat intake site can be retrieved and are not wasted.
Item 17 of SSE2: Cablings between Control Room to Sg Langat intake	96,000	The bulk of old cabling between Control Room to first Langat intake could still be used if not for the upgrading of several items at the second Langat intake. Only about 200m

		length of cabling and water pipes had to be laid from a point near the original first Langat intake to the new second Langat intake arising from the relocation of pump house and inlet structures to the new site about 200m away (see item 23 of SSC5). The bulk of this new cabling was due to the result of upgrading, and should not be claimable here.
Items in SSC3: Civl & Structural works for Inlet Structure and intake Plant	4,674,862 - 3,473,360 = 1,201,502	If there was no breach of duty of care, the suitable site for the original Langat intake would probably be at the new site for the second Langat intake, and the comparatively higher costs of construction the Langat intake involving more extensive excavation, deepening of riverbed and more river protection works would still be incurred in a situation of no breach. By reason of causal link between breach and wasted costs of construction of civil and structural works at the Langat intake, the plaintiffs' claims for civil and structural works at the Langat intake should be based on the construction costs of the first Langat intake site.

		In SSC3, the plaintiffs' total costs of civil and structural works at the first Langat intake site was RM3,473,360 as compared with those of RM4,674,862 at the second Langat intake site. This court finds that the total costs of civil and structural works at the first Langat intake site of RM3,473,360 should be used for computing and awarding the loss and/or damages here.
Items in SCC2 — Excavation, Road, Drainage and Miscel Works	1,092,397 – 486,486 = 605,911	For the same reasons as for Civil and Structural Works, the wasted costs of construction of excavation, road, drainage and miscellaneous works should be computed at the said costs incurred at the first Langat intake. In SSC2, the plaintiffs' total costs of excavation, road, drainage and miscellaneous works at the first Langat intake site was RM486,486 as compared with those of RM1,092,397 at the second Langat intake site.
Items in SCC1 — General and Preliminaries	10.1% of reduced construction costs after adjustment for dropping or exclusions	On 14 December 2021 PW1 Long Mutalib confirmed in evidence that the Preliminaries at the second Langat intake

		was 10.1% of the Contract Sum and that with the dropping of some items of costs for upgrading, the total amount of Preliminaries in the suit should be adjusted downwards pro rata. The adjusted total amount of Preliminaries should therefore be 10.1% of the reduced total construction costs after adjustment for dropping or exclusions.
Consultant's design fees	Pro rata reduction after adjustment for dropping or exclusions	On 14 December 2021 PW1 Long Mutalib confirmed in evidence that the design fees for the second Langat intake should also be reduced as a result of the dropping of some items of costs for upgrading. Although PW1 said the design fees reduction should be minimal, this court does not accept such contention.This court finds that with the upgrading and changes in the size and capacity of pumps, electricity input, faster rate of pumping water, higher tonnage of the crane, and changes in switchboards and cabling requirements for the second Langat intake, the adjustment factor should also be pro rata to the values of works and not just minimal.

Acceleration of works	635,000	This is no evidence of any specific instruction or directive from the defendants or LLM or MESB that the relocation of the Langat intake pump house and related facilities must be completed within a specific period of time. It was the plaintiffs who perceived that they had to accelerate and complete the construction of the second Langatintake quickly and they at their own initiative accelerated it. The is no causal link between the defendants' breach of duty of care and the costs of acceleration of works. As such, this item on acceleration of works cannot be recovered from the defendants.

[106] In the circumstances, the following amounts should be deducted from the plaintiffs' total claims of RM13,760,000 due to the items and reasons as summarised in the immediately foregoing table:

Items for deduction	Deductible Amounts and computation (RM)	Sub-Total of deductible amount (RM)
Deductions in respect of SCC2 to SCC5, SSE1, SSE2 and SSM1	RM750,000; RM270,000; RM380,000; RM395,000; RM48,800; RM48,800; RM33,000; RM33,000; RM80,000; RM96,000; RM1,201,502; RM605,911	RM3,942,013
Deductions in respect of SCC1 (Preliminaries)	Adjusted Preliminaries = (13,760,000 – 3,942,013) x 10.1 % = 991,616. Deduction amount is RM1,393,472 – RM991,616 = RM401,856	RM401,856

Deduction in respect of acceleration cost	RM635,000	RM635,000
Total Deductions	RM3,942,013 + RM401,856 + RM635,000 = RM4,978,869	RM4,978,869

[107] Therefore, after the adjustments and deductions, the total construction costs wasted or lost as a result of the defendants' breach of duty of care are RM13,760,000 - RM4,978,869 = RM8,781,131.

[108] The other miscellaneous items damages in the form of additional costs are summarised below:

Item of Costs	Amount (RM)	Reason or basis
Studioukur Geomatics Sdn Bhd's fee for survey of land and boundary	RM18,180.52	This item should not be adjusted downwards, as it is not part of upgrading for second Langat intake.
North Soil Eng (M) Sdn Bhd's fees for soil investigation report	RM39,969.74	This item should not be adjusted downwards, as it is not part of upgrading for second Langat intake.
G&P's fees for design and supervision	RM785,200, adjusted downwards to RM500,958	This item relates to upgrading also: see PW1's evidence on 14 December 2021. Adjusted amount should be RM785,000 x 8,781,131 / 13,760,000 = RM500,958
Total	RM559,108.26	

After the adjustments and deductions, the total additional design fees incurred as a result of the defendants' breach of duty of care are RM559,108 (to the nearest ringgit).

[109] In combination, after the adjustments and deductions, the total additional construction costs and design fees incurred in respect of Langat intake as a result of the defendants' breach of duty of care are RM8,781,131 + RM559,108 = RM9,340,239.

[110] Now the court will assess and analyse the amount of the plaintiffs' entitlement to damages under the tort of negligence in the circumstances of our present case.

[111] It is undisputed that in respect of the State land adjacent to the Labu intake which had no land acquisition problem or complication, the State

Government issued a 21 year lease which commenced on 24 April 2015 pursuant to the promise and agreement in the package-deal investment project. In the absence of any breach by either party, this Labu land lease will expire on 23 April 2036.

[112] If not for the land acquisition problem and the need to relocate the pump house, it would be most probable that the first Langat intake land would also be similarly be issued with a 21 year lease to expire at the same date as the Labu intake land lease, ie 23 April 2036.

[113] In the evidence adduced at the trial, there is no evidence or indication that the State Government will not eventually issue a 21 year lease in respect of the second Langat intake land. It is also in evidence that when the TOLs are extended in the interim period while waiting for the formality of the 21 year lease to be issued, the lease when issued would also be for 21 years from the date of issuance. This court finds that on a balance of probabilities the State Government would issue the 21 year lease before the expiry date of the current TOL for the second Langat intake land, ie 31 December 2022. In the circumstances, when the 21 year lease for the second Langat intake is issued by the end of this year, the plaintiffs would in combination have enjoyed a significantly longer period of occupying the Langat intake land until 21 years from end of 2022, ie about seven years longer than what the State Government promised in the package-deal investment project. PW1 in his evidence has stated that the longer combined period has not been taken into account in the plaintiffs' claims.

[114] It is trite that the purpose of awarding damages in a tort of negligence is to compensate the plaintiff for the loss and damages they suffered as a result of the breach and that in assessing the quantum of damages the court should not give more benefits to the plaintiff than what they would obtain if not for the breach of duty of care. In the premises this court holds that the additional benefit of longer period of occupation at the Langat intake land in the particular circumstances of our present case should also be taken into account in the award of damages. The seven months longer period in the context of the original three years under interim TOL plus 21 year lease represent about 30% of the original period.

[115] In order to account for the longer period of enjoying the occupation at the Langat intake land, the total additional construction costs and design fees incurred in the amount of RM9,340,239 in respect of Langat intake as a result of the defendants' breach of duty of care should be reduced by 30% to RM9,340,239 x 70% = RM6,538,167.

DECISION AND JUDGMENT OF THIS COURT

[116] In conclusion this court orders that the State Government (the first defendant) and PTD Kuala Langat (the third defendant) shall jointly and severally pay damages totalling RM6,538,167 to the plaintiffs, together with interest thereon at 5%pa from the date of filing of this suit until the date of full realisation.

[117] This court assesses the costs of the suit at RM40,000, subject to allocatur, and orders that the State Government (the first defendant) and PTD Kuala Langat (the third defendant) shall jointly and severally pay the costs of suit to the plaintiffs.

[118] From the evidence adduced, this court finds that the plaintiffs have proved a case of negligence against the second defendant, Pengarah Tanah dan Galian Negeri Selangor. As such, no judgment is made against the second defendant.

CLARIFICATION

[119] As the plaintiffs have not pleaded their claims on the unlikely basis that there would be an eventual refusal by the State Government and PTD Kuala Langat to issue a 21 year lease in respect of the second Langat intake, this court has not made any decision or award on such basis. From the findings, decisions and reasons explained by this court above, it is clear in the unlikely event of the State Government or PTD Kuala Langat prematurely evicting the plaintiffs from the second Langat intake land or wrongly and prematurely prohibiting the plaintiffs from continuing their operations at the second Langat intake lands, that act in future will form a new factual basis for another separate cause of action by the plaintiffs against the defendants.

Order accordingly.

Reported by Ahmad Ismail Illman Mohd Razali